Simplified Islamic Jurisprudence

Based on the Qur'ân and the *Sunnah*

Al-Fiqhul-Muyassaru minal-Qur'âni was-Sunnah

Volume II

From Marriage to Inheritance

الفقه الميسر من القرآن والسنة

(الجزء الثاني: من الزواج حتى المواريث)

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Preface

In the Name of Allah, and blessings and peace be upon Prophet Muhammad who is the best human source of guidance that Allah has sent as a mercy for all the worlds.

This is the second volume of ***Simplified Islamic Jurisprudence***, and it deals with the remaining sections of Islamic Jurisprudence (*Fiqh*) that the first volume did not tackle. To remind our readers, the first volume of this book dealt with the main acts of worship: Purification (*Tahârah*), Prayer (*Salâh*), Obligatory Alms (*Zakâh*), Fasting (*Siyâm*), and Pilgrimage (*Hajj*). This second volume covers the other sections of *Fiqh* starting from marriage up to inheritance.

Al-Manarah presents this book with its two volumes in order to secure *fiqhî* knowledge for English-speaking Muslims so that they can be aware of this significant aspect of religious knowledge that every Muslim needs to acquire in some way or another.

We thank every one who has helped in preparing, translating, editing, or publishing this book, or during any stage of work. We also invoke Allah to make this effort purely exerted for His Sake.

Al-Manarah Manager
Muhammad `Uthmân

Introduction

Praise be to Allah, Who has made religious knowledge a direct and effective means through which His servants can know His ordinances and forbiddances and draw near to Him, and peace and blessings be upon the most honorable Prophet and Messenger, Muhammad, who has been sent with the light of faith which extends to whomsoever Allah grants guidance to the Straight Path. May Allah's peace and blessings be also upon the Prophet's household, Companions, and whoever perfectly follows in their footsteps until the Day of Resurrection!

In the first volume of ***Simplified Islamic Jurisprudence***, we dealt with the rulings of the glorious Islamic Jurisprudence (*Fiqh*) concerning acts of worship or *`ibâdât*, which include Purification (*Tahârah*), Prayer (*Salâh*), Obligatory Alms (*Zakâh*), Fasting (*Siyâm*), and Pilgrimage (*Hajj*).

In this second and last volume of the book, we tackle the remaining sections of *Fiqh* including marriage, divorce, *zihâr*, *îlâ'*, *khul`*, *li`ân*, oaths, vows, food, drinks, utensils, clothing, adornments, crimes, blood-money, jurisdiction, legal punishments, dealings and transactions, and inheritance.

The researches related to this work are mainly based on the Qur'ân and the *Sunnah* then on the statements of the Four *Imâms* of *Fiqh*: Mâlik, Abû Hanîfah, Ash-Shâfi`î, and Ahmad Ibn Hanbal.

This book has been compiled and translated for helping English-speaking Muslims to learn *fiqhî* knowledge in an easy and interesting way. For achieving this objective, at the end of each part there will be a questions-and-answers appendix dealing with a number of queries related to the part discussed. This interesting method is apt to draw the attention of our readers to the information included in these answers and consequently it can be easily inculcated in their minds.

Moreover, for making things easy for our readers, we have inserted a glossary of Arabic terms at the end of this book. This glossary includes a conclusive definition of each term, and this helps our readers acquire better knowledge of the Arabic *shar`î* terms which are mentioned in the different parts of the book and which can be found in any other book or study dealing with religious subjects. Also for facilitating the job of keeping up with the Arabic transliterated terms, we have attached a table of transliteration at the end of the book.

And, before ending this introduction, I would like to express my gratitude to my brother Mr. Muhammad `Uthmân, Al-Manarah Manager, for trusting me and giving me the opportunity to introduce this simplified yet inclusive book on *Fiqh* as a whole. I also thank my sister Reima Youssif Skakeir (American) whose editing of this book helped me a lot to introduce it in the best possible form. I moreover thank my sincere wife whose moral help and invocations were a real support to me.

I would also like to tell our dear readers that I shall be happy to receive any comment you may have on this work as well as any piece of advice, recommendation, or suggestion you may like to let us know before preparing a second edition of this book. The following are my email addresses:

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Finally, we ask Allah to bless this effort, make it purely exerted for His Sake, and to facilitate it for whoever seeks knowledge through it. Amen!

Muhammad `Abdul-Fattah
5/5/1425 A.H.
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Part One
Marriage

Marriage: Definition and Significance

Marriage is a means of unity that connects between a man and a woman who aim to share a life together for establishing a Muslim family according to the instructions of Almighty Allah and His Messenger (PBUH).

Marriage is a social institution which is as old as the human race itself. It is a relation between a man and a woman which is recognized by custom or law and involves certain rights and duties, both in the case of the parties entering the union of marriage, and in case of the children born of it. Marriage has thus two main functions to perform: it is the means adopted by human society for regulating relations between sexes; and it furnishes the mechanism by means of which the relation of a child to the community is determined.

The rites and ceremonies of marriage have been different with different peoples and in different ages but the two functions mentioned above are common as far as marriage is concerned. It always implies the right of sexual intercourse as allowed and recognized by society and the duties of parents in bringing up children.

Islam recognizes this institution and accepts it as the basis of human society after purging it of all those evils which penetrated it once.

Firstly, Islam does not regard it as a union only for the gratification of sexual lust, but a social contract with wide and varied responsibilities and duties. The reason behind it is that, according to Islam, a woman is not a plaything in the hand of her husband, but a spiritual and moral being that is entrusted to him on the sacred pledge to which Allah is made a witness. The wife is, therefore, not meant to provide sensuous pleasure only to the male, but to fully cooperate with him in making the life of the family and ultimately of the whole humanity significantly meaningful.

In Islam, marriage is very important as it helps the Muslim have a good, stable, and decent life as long as he deals with it according to Islamic instructions. It is a norm of Allah in His creation. Almighty Allah says,

﴿وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُم مِّنْ أَنفُسِكُمْ أَزْوَاجًا لِّتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُم مَّوَدَّةً وَرَحْمَةً إِنَّ فِي ذَٰلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ﴾

﴿*And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy. Verily, in that are indeed signs for a people who reflect.*﴾

(Qur'ân: 30: 21)

He also says, commanding Muslims to marry those who are single among them and those who are pious and righteous,

﴿وَأَنكِحُوا الأَيَامَى مِنكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِن فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ﴾

﴿*And marry those among you who are single (i.e. a man who has no wife and a woman who has no husband) and (also marry) the Sâlihûn (pious, fit and capable ones) of your (male) slaves and maid-servants (female slaves). If they be poor, Allah will enrich them out of His Bounty. And Allah is All-Sufficient for His creatures' needs, All-Knowing (about the state of the people).*﴾

(Qur'ân: 24: 32)

Moreover, the *Sunnah* affirms the significance of marriage and condemns avoiding it without legal excuses. It has been mentioned in the Two Sahîhs on the authority of Anas, may Allah be pleased with him, that the Prophet (PBUH) said,

"What is the matter with some people? One of them said, 'As for me, I shall fast and never break my fast,' and another one said, 'As for me, I shall perform supererogatory night prayers and never sleep (at night),' while the other said, 'As for me, I shall never eat meat.' However, I fast and break my fast, I perform supererogatory night prayers and sleep, I marry women, and I (also) eat meat. So, he who does not follow my tradition (Sunnah) is not from me (i.e., not one of my followers)."

It has also been narrated on the authority of Ma`qil Ibn Yasâr that the Prophet (PBUH) said,

> *"Marry affectionate and fertile females, for I will be proud of your numerousness before (the other) nations on the Day of Resurrection."*[1]

It has moreover been narrated by Ibn Mas`ûd, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"O young people! Whoever among you is able (to marry) should marry, and whoever is not able (to marry) is (recommended) to fast, as fasting diminishes his sexual power (positively)."*[2]

Here is another *hadîth* which is quite interesting and encouraging, because it states that intercourse – which is normally and legally practiced through marriage – brings about reward in spite of the fact that it is a reaction to one's sexual lust. It has been narrated by Abû Dharr, may Allah be pleased with him, that the Prophet (PBUH) said, "*... and there is an act of charity in the intercourse practiced by any one of you.*" They (the listeners) said, "O Messenger of Allah! Would any one of us answer the call of lust (and has intercourse) then receives a reward for that?" He (PBUH) said, "*Tell me, if he answered it in a prohibited way, would he not be sinful? Similarly, if he answers it in a lawful way (as by getting married), he receives a reward.*"[3]

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[1] Narrated by Abû Dâwûd and An-Nasâ'î.
[2] Narrated by Al-Bukhârî and Muslim.
[3] Narrated by Muslim and Abû Dâwûd.

The *Shar`î* Ruling concerning Marriage

Marriage is one of the most confirmed lines of conduct (*sunan*), and according to the common meanings of the aforementioned verses and *hadîths* and other ones, most scholars maintain that marriage is legally **desirable** (*mustahabb*). However, it becomes **obligatory** if a person fears that he should commit *zinâ* (adultery or fornication) if he does not get married, as long as he has the ability to get married. This is because *zinâ* is prohibited, and whenever there is a thing (like marriage) without which something prohibited (like *zinâ*) cannot be warded off, this thing becomes a must.

The following verse indicates that marriage is not obligatory on the part of women,

﴿وَالْقَوَاعِدُ مِنَ النِّسَاءِ اللَّاتِي لَا يَرْجُونَ نِكَاحًا فَلَيْسَ عَلَيْهِنَّ جُنَاحٌ أَن يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِزِينَةٍ وَأَن يَسْتَعْفِفْنَ خَيْرٌ لَّهُنَّ وَاللَّهُ سَمِيعٌ عَلِيمٌ﴾

﴾*And as for women past child-bearing who do not expect wed-lock, it is no sin on them if they discard their (outer) clothing in such a way as not to show their adornment. But to refrain (i.e. not to discard their outer clothing) is better for them. And Allah is All-Hearer, All-Knower.*﴿

(Qur'ân: 24: 60)

What matters here is the first part of the verse: ﴿*And as for women past child-bearing who do not expect wed-lock...*﴾

There is also the *hadîth* narrated by Abû Sa`îd, who said,

> "A man came with a daughter of his to the Prophet (PBUH) and said, 'My daughter refuses to get married.' He (PBUH) said to her, '*Obey your father.*' But she said, 'No, unless you tell me the right of a husband over his wife.'"

The narrator added that the Prophet (PBUH) said to her,

> "*A husband's right over his wife is (so ascertained) that (even) if he had a fester and she licked it or his nostrils gushed out pus or blood and she licked that, she would not have fulfilled it (his right).*"[1]

She said, "By Him Who has sent you with the truth, I will never get married." So, the Prophet (PBUH) said, "*Do not marry them off except with their permission.*"[2]

This *hadîth* indicates that it is permissible to avoid marriage due to some legal excuse, yet it is better to get married because it has so many advantages and benefits.

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[1] The actions mentioned here may be a metaphorical means to elevate the status of a husband's rights over his wife and is not something that degrades a Muslim woman. And, Allah knows best. (Editor)

[2] Narrated by Ibn Abû Shaybah in his *Musannaf*.

The Benefits of Marriage

There are many benefits and advantages that a person can get as a result of marriage. Some of these benefits are the following:

1. Complying with Allah's command.
2. Following the *Sunnah* of the Prophet (PBUH) and the line of conduct adopted by the Messengers before him. Almighty Allah says, ﴾*And indeed We sent Messengers before you (O Muhammad), and made for them wives and offspring...*﴿ (Qur'ân: 13: 38)
3. Assuaging one's lust and lowering one's gaze.
4. Protecting one's genitals against evil and immorality and helping women be modest and chaste.
5. Preventing abomination and *zinâ* from spreading among Muslims.
6. Producing abundant offspring so that the Prophet (PBUH) can feel proud of that before the other nations and Messengers on the Day of Resurrection.
7. Obtaining reward by virtue of having intercourse lawfully.
8. Loving what the Prophet (PBUH) used to love, as he said, "*I have been made to love perfume*

and women from among (the pleasures of) your world."[1]

9. Producing faithful offspring that can defend Islam and its people and lands and be cooperative in righteousness and piety.
10. Enjoying the affection, love, and mercy which Allah puts between spouses. This is in addition to many other benefits of marriage some of which only Allah knows.

[1] Narrated by An-Nasâ'î and others.

Unmarriageable Women

Unmarriageable women are women whom man is not allowed to marry. Allah has mentioned them in the Qur'ân in the following verses,

﴿وَلاَ تَنكِحُوا مَا نَكَحَ آبَاؤُكُم مِّنَ النِّسَاءِ إِلاَّ مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتاً وَسَاءَ سَبِيلاً ۞ حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالاَتُكُمْ وَبَنَاتُ الأَخِ وَبَنَاتُ الأُخْتِ وَأُمَّهَاتُكُمُ اللاَّتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللاَّتِي فِي حُجُورِكُم مِّن نِّسَائِكُمُ اللاَّتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلاَ جُنَاحَ عَلَيْكُمْ وَحَلاَئِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلاَبِكُمْ وَأَن تَجْمَعُواْ بَيْنَ الأُخْتَيْنِ إِلاَّ مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُوراً رَّحِيماً ۞ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلاَّ مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُم مَّا وَرَاءَ ذَلِكُمْ أَن تَبْتَغُوا بِأَمْوَالِكُم مُّحْصِنِينَ غَيْرَ مُسَافِحِينَ﴾

﴿And marry not women whom your fathers married, except what has already passed; indeed it was shameful and most hateful, and an evil way. Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your

mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your step daughters under your guardianship, born of your wives to whom you have gone in - but there is no sin on you if you have not gone in them (to marry their daughters), - the wives of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is Oft-Forgiving, Most Merciful. Also (forbidden are) women already married, except those (captives and slaves) whom your right hands possess. Thus has Allah ordained for you. All others are lawful, provided you seek (them in marriage) with Mahr from your property, desiring chastity, not committing illegal sexual intercourse...﴾

(Qur'ân: 4: 22-24)

Unmarriageable women are divided into two sections:

1. **Eternally prohibited women**, and these are not allowed for man to marry at any time forever.

2. **Temporarily prohibited women**, and these are not allowed for man to marry in special cases, so when these cases are over he can get married to them.

The women of each section will be pinpointed as follows.

The Eternally Prohibited Women

(A) Women prohibited because of kinship. They are seven, as follows:

1. **Mothers:** This includes a man's mother, the mother of his father, the mother of his mother, and all his grandmothers on the paternal and the maternal sides.
2. **Daughters:** This includes a man's daughters as well as all the daughters and granddaughters of his daughters and sons.
3. **Sisters:** This includes sisters from the paternal and the maternal sides.
4. **Paternal aunts:** This includes the sisters of a man's father as well as the paternal aunts of his father and mother.
5. **Maternal aunts:** This includes the sisters of a man's mother as well as the maternal aunts of his father and mother.
6. **Brother's daughters,** from all sides.
7. **Sister's daughters,** from all sides.

Man is prohibited to get married to any of these seven categories of women, and this is for good as unanimously agreed upon by scholars.

To make it easy, you should know that all the female relatives of a man because of kinship are prohibited with regard to marriage, except for four women: the daughter of his paternal uncle, the

daughter of his maternal uncle, the daughter of his paternal aunt, and the daughter of his maternal aunt.[1]

(B) Women prohibited because of affinity. They are four, as follows:

1. The wife of father (stepmother):

It has been narrated by Ibn `Abbâs, may Allah be pleased with him, that people during the pre-Islamic period of ignorance used to declare as prohibited what was to be prohibited (in marriage) except for stepmothers and having two sisters in wedlock at the same time. So, Almighty Allah revealed,

﴿وَلاَ تَنكِحُوا مَا نَكَحَ آبَاؤُكُم مِّنَ النِّسَاءِ إِلاَّ مَا قَدْ سَلَفَ﴾

﴿*And marry not women whom your fathers married, except what has already passed...*﴾ (Qur'ân: 4: 22)

and

﴿وَأَن تَجْمَعُواْ بَيْنَ الأُخْتَيْنِ إِلاَّ مَا قَدْ سَلَفَ﴾

﴿*(Forbidden to you for marriage are)... and two sisters in wedlock at the same time...*﴾ (Qur'ân: 4: 23)

2. The mother of wife (mother-in-law): She becomes unmarriageable to her daughter's husband once he conducts the marriage contract. This includes the mother of the mother of a man's wife and the mother of her father.

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[1] Ibn Taymiyah, *Fatâwâ*.

3. The daughter of wife (stepdaughter): But to be unmarriageable, the man in question must consummate the marriage with her mother. So, if he conducts marriage to her and does not consummate it, it is permissible for him to marry her daughter. Almighty Allah says,

> ﴿*... and your step daughters under your guardianship, born of your wives to whom you have gone in - but there is no sin on you if you have not gone in them (to marry their daughters)...*﴾

4. The wife of son (daughter-in-law): It is not permissible for a man to marry the wife of his son who springs from his own loins, as Almighty Allah says,

> ﴿*... and the wives of your sons who (spring) from your own loins...*﴾

This verse also includes the wife of one's foster son, and the words ﴿*who (spring) from your own loins*﴾ are to negate the prohibition of getting married to the wife of one's adopted son, as that was customary during the pre-Islamic period of ignorance. The Prophet (PBUH) said concerning suckling,

> "*Foster relationship prohibits that which kinship relationship prohibits.*"[1]

(C) Women prohibited because of foster relationship

Almighty Allah says,

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[1] See At-Tabarī, 8/149.

﴾... *and your foster mother who gave you suck, your foster milk suckling sisters...*﴿

And, the Prophet (PBUH) said,

> *"Suckling (i.e., foster relationship) prohibits that which delivery prohibits."*[1]

This means that women who are prohibited because of kinship relationship are also prohibited because of foster relationship on the part of the suckled male, as follows:

1. The woman who suckles (wet nurse) and her mother, because the former is his mother and the latter is his grandmother.
2. The daughter of the wet nurse, because she is his sister.
3. The sister of the wet nurse, because she is his maternal aunt.
4. The daughter of the daughter of the wet nurse, because she is his sister's daughter (his niece).
5. The mother of the husband of the wet nurse as she suckled the male in question breast-milk which came as a result of her pregnancy from her husband. Thus, the mother of this husband is that male's grandmother.
6. The sister of the husband of the wet nurse, because she a paternal aunt of the male in question.
7. The daughter of the son of the wet nurse (i.e., her granddaughter), because she is the

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[1] Narrated by Al-Bukhârî and Muslim.

daughter of the brother (niece) of the male in question.

Along with these there are also:

8. The daughter of the husband of the wet nurse even from another woman, because she is a stepsister as to the suckled male.
9. The other wife of the husband of the wet nurse, because she is a stepmother as to the suckled male.
10. The wife of the suckled male is prohibited for the husband of the wet nurse, because she is his daughter-in-law.

It has been narrated by Al-Bukhârî and Muslim that the Prophet (PBUH) ordered `Â'ishah, may Allah be pleased with her, to allow Aflah, the brother of Abul-Qa`îs – who (i.e., Aflah) was her foster paternal uncle – to enter upon her.

There is also an important case here: if the suckled person is a female, she becomes prohibited for the husband of the wet nurse, because he is her father, as well as for the brother of the husband of the wet nurse because he is her (i.e., the suckled female's) uncle; also the father of the husband is prohibited because he is her grandfather, and so on.

The conditions of prohibition because of foster relationship

Prohibition of marriage because of foster relationship is established and confirmed on condition of two things:

1. **The number of times of suckling must be five or more.** It has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that the Messenger of Allah (PBUH) said, "*One sip or two sips do not cause prohibition.*"[1] This means that one sip or two sips of suckling does not cause the prohibition of establishing a marriage contract between a foster son (or daughter) and any of the women (or men) whom the *Sharî`ah* has specified. It has also been narrated by `Â'ishah, who said that it had been revealed in the Qur'ân that ten clear times of suckling caused prohibition (of marriage), then it (that ruling) was abrogated (and substituted) by (the ruling that) five clear times of suckling (would cause prohibition), and the Messenger of Allah (PBUH) died and it was before that time (found) in the Qur'ân (and recited by the Muslims).[2]

2. **The act of suckling must be done during the first two years** in the suckled person's lifetime. Almighty Allah says, ﴿*The mothers shall give suck to their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling...*﴾ (Qur'ân: 2: 233) This is because after two years the term of suckling ends and no suckling after these two years is considered by the

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[1] Narrated by Muslim.
[2] Narrated by Muslim and others.

Sharî`ah, especially the Prophet(PBUH)said, *"Foster relationship is through (nothing but) hunger,"*[1] meaning that foster relationship that causes prohibition of marriage is that which comes as a result of suckling during the period in which nothing would gratify the hunger of a baby except breast-milk. Moreover, it has been authentically narrated that `Umar, Ibn Mas`ûd, Ibn `Abbâs, Ibn `Umar, and other Companions of the Prophet (PBUH) maintain that suckling that causes prohibition is that which takes place before the baby is weaned.[2] Most scholars adopt the same view.

If any of these two conditions is not met, suckling does not cause prohibition, and Allah knows best.

The Temporarily Prohibited Women

As pinpointed earlier, unmarriageable women are either permanently prohibited or temporarily prohibited. The temporarily prohibited women are not allowed for man to marry in special cases, and when these cases are over he can get married to them. These women can be listed as follows,

(A) Two sisters in wedlock at the same time: Almighty Allah says, ﴾*(Forbidden to you for marriage are)... and two sisters in wedlock at the same time...*﴿ (Qur'ân: 4: 23) Therefore, it is not

[1] Narrated by Al-Bukhârî and Muslim.
[2] See *Jâmi'u Ahkâmin-Nisâ'*, 3/72-74.

permissible for a man to have two sisters in wedlock at the same time, but if his wife dies or he divorces her, he can marry her sister. Interestingly enough, it has been narrated by Al-Bukhârî and Muslim on the authority of Umm Habîbah, the Prophet's wife, may Allah be pleased with her, that she said, "I said, 'O Messenger of Allah! Marry my sister, the daughter of Abû Sufyân.' The Prophet said, '*Do you like that?*' I replied, 'Yes, for even now I am not your only wife and I like that my sister should share the good (of being a wife of yours) with me.' The Prophet said, '*But that is not lawful for me,*'..." to the end of the *hadîth*.

(B) A woman and her parental or maternal aunt in wedlock at the same time: This is prohibited because the Prophet (PBUH) said, "*A woman is not to be had in wedlock along with her paternal aunt at the same time nor is that to be between a woman and her maternal aunt.*"[1]

(C) A married woman, or a woman during her *'iddah* (waiting period) as to another man. Almighty Allah says, ﴿*Also (forbidden are) women already married, except those (captives and slaves) whom your right hands possess...*﴾ This means that a man is not allowed to marry a married woman except when she is **taken captive**. This is confirmed by Ibn Abbâs, may Allah be pleased with him, as narrated by At-Tabarî in his *Tafsîr*. Besides, it is lawful for a

[1] Narrated by Al-Bukhârî, Muslim, and An-Nasâ'î.

man to marry a woman who is **married to a disbeliever** and has embraced Islam, beeause her embracing Islam separates between her and her disbelieving husband. Almighty Allah says, ﴿*O you who believe! When believing women eome to you as emigrants, examine them, Allah knows best as to their Faith, then if you aseertain that they are true believers, send them not baek to the disbelievers, they are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them. But give the disbelievers that (amount of money) which they have spent (as their Mahr) to them. And there will be no sin on you to marry them if you have paid their Mahr to them...*﴾ (Qur'ân: 60: 10)

(D) **A woman who has been divorced three times** is not lawful for her husband unless she marries another one validly (i.e., not through the *muhallil* marriage as will be clarified soon in the section dealing with this forbidden form of marriage). Almighty Allah says, ﴿*And if he has divoreed her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allah...*﴾ (Qur'ân: 2: 230)

(E) **A polytheist woman** is prohibited unless she confesses Islam, because Almighty Allah says, ﴿*And do not marry Al-Mushrikât (idolatresses, ete.) till they believe (worship Allah Alone). And*

indeed a slave woman who believes is better than a (free) Mushrikah (idolatress, etc.), even though she pleases you... ﴿ (Qur'ân: 2: 221) Yet, this rule has an exception, which is that a Muslim can marry a **Christian** or a **Jewish** woman. Almighty Allah says, ﴾*Made lawful to you this day are At-Tayyibât (all kinds of Hâlal [lawful] foods, which Allah has made lawful). The food (slaughtered cattle, eatable animals, etc.) of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them. (Lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the Scripture (Jews and Christians) before your time, when you have given their due Mahr, desiring chastity (i.e. taking them in legal wedlock) not committing illegal sexual intercourse, nor taking them as girl-friends...*﴿ (Qur'ân: 5: 5)

(F) **A woman who commits *zinâ*** is prohibited unless she shows repentance. Almighty Allah says, ﴾*The adulterer marries not but an adulteress or a Mushrikah and the adulteress none marries her except an adulterer or a Muskrik.*[1] *Such a thing is forbidden to the believers (of Islamic Monotheism).*﴿ (Qur'ân: 24: 3) Also, it has been narrated that Marthad Ibn

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[1] This means that the man who agrees to marry (have a sexual relation with) a *mushrikah* (female polytheist, pagan, or idolatress) or a prostitute, then surely he is either an adulterer, or a *mushrik* (polytheist, pagan, or idolater, etc.), and the woman who agrees to marry (have a sexual relation with) a *mushrik* or an adulterer, then she is either a prostitute or a *mushrikah*. And, Allah knows best.

Abû Marthad Al-Ghanawî went to the Prophet (PBUH) and said to him, "O Messenger of Allah! Shall I marry `Anâq?" She was a prostitute. Marthad said that the Prophet (PBUH) kept silent then Allah revealed, ﴿*... and the adulteress none marries her except an adulterer or a Muskrik...*﴾ So he (PBUH) called him and recited it (the verse) to him and said, "*Do not marry her!*"[1]

[1] Narrated by At-Tirmidhî, Abû Dâwûd, and An-Nasâ'î.

Invalid Forms of Marriage

The *Shighâr* Marriage

The *shighâr* marriage is that a man exchanges his daughter or sister for another man's daughter or sister on condition that no reciprocation of *mahr* (Islamic dowry) is required.

This marriage is prohibited because conditioning such an exchange requires the invalidation of this marriage. This involves great mischief as it requires that women are obliged to get married to men whom they may not like only for the sake of their guardians, and this is unjust. It also deprives women of their right to their dowries just like other women. This is in addition to the disputes and differences that appear after such a form of marriage, and these disputes and differences – with the sufferings they bring about – are worldly punishments for those who do against Allah's laws and apply such an invalid form of marriage.

It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Messenger of Allah (PBUH) forbade *shighâr* and said,

> "Shighâr is that a man says to another man, 'Marry your daughter to me and I shall marry my daughter to you,' or 'Marry your sister to me and I shall marry my sister to you'."[1]

[1] Narrated by Muslim, An-Nasâ'î, and Ibn Mâjah.

The Prophet (PBUH) also said,

"There is no shighâr in Islam."[1]

The *Muhallil* Marriage

The *muhallil* marriage is that a man marries a woman who has been divorced three times after the end of her waiting period (*'iddah*) then divorces her so that she can reunite with her first husband.

In other words, this form of marriage refers to a man who temporarily takes a woman in marriage, has sexual intercourse with her, and then divorces her to go back to her ex-husband's bond after the termination of her waiting period.

This marriage is prohibited and it is one of the major sins, as whoever does that is cursed and any person for whom it is done is cursed as well. It has been narrated that Ibn Mas'ûd, may Allah be pleased with him, said,

> "The Messenger of Allah (PBUH) cursed the *muhill* (i.e., the man who marries in the way of *muhallil* marriage) and the one for whom the *muhallil* (marriage) is done."[2]

It is worth mentioning here that what is considered here by the *Sharî'ah* is the intention of the man who marries in this way of *muhallil* marriage, because in this marriage it is stipulated upon him that he must divorce the woman in question so that she can reunite

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[1] Narrated by Muslim.
[2] Narrated by At-Tirmidhî and Ahmad.

with her ex-husband. The same ruling applies if this is not stipulated yet the man himself determines to do so. It has been narrated that Nâfi` said,

> "A man came to Ibn `Umar, may Allah be pleased with him, and asked him about (the case of) a man who divorced his wife three times then a brother of his married her to make her lawful for his brother again and that was not planned by him (the ex-husband). Did that woman become (as a result of that) lawful for the first (husband)? He (Ibn `Umar) said, 'No, unless the marriage is out of free will and desire. We used to regard this as *zinâ* during the time of the Messenger of Allah (PBUH).'"[1]

This means that the first husband's intention is not considered here – unless he plans for the marriage – because he does not have any power over the marriage contract, as he is a foreigner just like any other foreigner.

By the same token, the woman's intention is not considered here either, because both divorcing her and keeping her in wedlock is at the hands of the husband, and not at hers. This is indicated by the following narration:

It has been narrated by Al-Bukhârî and Muslim on the authority of `Â'ishah, may Allah be pleased with her, that the wife of Rifâ`ah Al-Qurazî came to the Prophet (PBUH) and said, "I was Rifâ`ah's wife, but he divorced me and it was a final irrevocable

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[1] Narrated by Al-Hâkim and Al-Bayhaqî.

divorce. Then I married `Abdur-Rahman Ibnuz-Zubayr but he is impotent." The Prophet (PBUH) asked her, "*Do you want to remarry Rifâ`ah? You cannot unless you had a complete sexual relation with your present husband.*"

This *hadîth* indicates that the Prophet (PBUH) did not consider the woman's intention.

The *Mut`ah* (Temporary) Marriage

The *mut`ah* marriage or temporary marriage is a personal contract between a man and a woman to cohabit for a limited period of time at the end of which she becomes automatically divorced, in return for a certain remuneration payable by the man.

This form of marriage was once lawful during the lifetime of the Prophet (PBUH) then Allah abrogated that permission on the tongue of His Prophet (PBUH) to be permanently prohibited until the Day of Resurrection.

It has been narrated that Sabrah, may Allah be pleased with him, said,

> "The Messenger of Allah (PBUH) permitted the *mut`ah* marriage for us. So, I and another person went out and saw a woman of Banû `Âmir, who was like a young long-necked she-camel. We presented ourselves to her (for contracting *mut`ah* marriage), whereupon she said, 'What dower would you give me?' I said, 'My cloak' and my companion also said, 'My cloak'. The cloak of my companion was superior to mine, but I was younger than he was. When she

looked at the cloak of my companion she liked it, and when she cast a glance at me I looked more attractive to her. She then said (to me), 'Well, you and your cloak are sufficient for me.' I remained with her for three nights, and then the Messenger of Allah (PBUH) said, '*He who has any such woman with whom he had contracted mut`ah marriage, should dismiss her.*'"[1]

Accordingly, whoever has contracted any *mut`ah* marriage must dismiss his wife, because this is an invalid form of marriage and the Prophet (PBUH) forbade it and commanded this separation. Thus, it is obvious that such a form of marriage encourages the Muslim to move from one woman to another without stability and this in turn may lead him to many forms of abomination and mischief as he seeks to gratify his desire. This marriage also diminishes trust among Muslims and opens a wide gate to deceit, hatred, and animosity.

The `*Urfi* (Informal) Marriage

This form of marriage refers to the phenomenon that has widely spread among the Muslim youth. For example, a man would establish a relation with his female colleague and have intercourse with her secretly, while both of them base this abominable relation on a mere piece of paper which falsely authenticates their relation and perhaps they seek the testimony of some immoral persons who themselves are of the same nature and may be

[1] Narrated by Muslim.

involved in similar relations. In this alleged contract of marriage, there is no *waliyy* (legal guardian), though the latter is one of the main conditions of valid marriage according to the majority of scholars, and once it is not met the marriage in question is not valid. There is also lack of the condition of marriage announcement.

There is no doubt that such a form of marriage is invalid. This is because both the Qur'ân and the *Sunnah* stipulate that *waliyy* is a must as far as marriage is concerned. Almighty Allah says,

﴿وَلاَ تُنكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُؤْمِنٌ خَيْرٌ مِّن مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ﴾

﴾*... And give not (your daughters) in marriage to Al-Mushrikûn till they believe (in Allah Alone) and verily, a believing slave is better than a (free) Mushrik (idolater, etc.), even though he pleases you...*﴿

(Qur'ân: 2: 221)

Thus Allah has entrusted legal guardians the matter of marrying. Another similar verse reads,

﴿وَأَنكِحُوا الأَيَامَى مِنكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ﴾

﴾*And marry those among you who are single (i.e. a man who has no wife and a woman who has no husband) and (also marry) the Sâlihûn (pious, fit and capable ones) of your (male) slaves and maid-servants (female slaves)...*﴿

(Qur'ân: 24: 32)

And, the Prophet (PBUH) said,

> *"There is no (valid) marriage except with a waliyy."*[1]

He also said,

> *"Whenever a woman marries without the permission of her waliyy, her marriage is invalid," repeating it three times, "and she deserves a mahr in return for what he (the husband) has got from her. If they should dispute (concerning this), then the sul<u>t</u>ân (caliph, ruler, etc.) is the waliyy of whoever has no waliyy."*[2]

As pinpointed earlier, the stipulation that there must be a *waliyy* is the view of the majority of scholars. Ibn Taymiyah says in his *Fatâwâ* that the majority of scholars assert that any marriage which is contracted without a *waliyy* is invalid. He also says that if a man marries a woman without a *waliyy* or witnesses and conceals the marriage, then this marriage is invalid as unanimously agreed upon by Muslim *Imâms*.[3]

It may be significant in this connection to mention that in his *Fiqhul-Usratil-Muslimah* (*Fiqh* of the Muslim Family), *Shaykh* <u>H</u>asan Ayyûb mentions the following points:

- The <u>H</u>anafîs hold that it is permissible for a woman to conduct her own marriage as she

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[1] Narrated by Abû Dâwûd and others.

[2] Narrated by A<u>h</u>mad, Abû Dâwûd, and others.

[3] See Ibn Taymiyah, *Fatâwâ*, 32/21 and 102.

makes commercial dealings, rents things, puts up collateral, etc.

- Mâlik says that it is the inferior woman who can do so, not the honorable one.
- The Ẕâhirîs are of the opinion that it is permissible for the non-virgin woman to conduct her own marriage but not the virgin.[1]

To recapitulate, without indulging into the differences of scholars concerning the conditions of the validity of marriage, it is sufficient for the invalidity of the *`urfi* or informal marriage that the "majority of scholars" maintain that there is no valid marriage without *waliyy* as pinpointed and illustrated above. Therefore, any marriage of the kind is to be annulled and revoked no matter how long it has lasted.[2] And, Allah knows best.

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[1] See the section "A Marriage Contract without a Legal Guardian" on the part dealing with marriage in the pinpointed book.

[2] Wahbah Az-Zuẖaylî, *Al-Fiqh Al-Islâmî*.

The Qualities Desired in a Spouse

The Qualities Desired in a Wife

1. **To be religious**, for Almighty Allah says, ﴾*And indeed a slave woman who believes is better than a (free) Mushrikah (idolatress, etc.), even though she pleases you...*﴿ (Qur'ân: 2: 221) And, it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said, "*A woman is married for four things: her wealth, her family status, her beauty, and her religion. So, you should marry the religious woman (otherwise) you will be a loser.*"[1]

2. **To be, along with religiosity, of wealth, family status, and beauty,** because the Prophet (PBUH) said in the first part of the abovementioned *hadîth*, "*A woman is married for four things: her wealth, her family status, her beauty, and her religion...*"

3. **To be kind and affectionate,** for the Prophet (PBUH) said, "*The righteous among the women of the Quraysh are those who are kind to their young ones and who look after their husbands' property.*"[2]

4. **To be a virgin**, because the Prophet (PBUH) said to Jâbir Ibn `Abdullâh, may Allah be pleased

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Al-Bukhârî and Muslim.

with him, when he had married, "*Is she a virgin or a matron?*" He said, "A matron" Thereupon he (PBUH) said, "*Why not a virgin, so that you might play with her and she with you, and you might amuse her and she amuse you?*"[1]

5. **To be obedient and trustworthy**, because it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) was asked about the best of women and he said, "*(She is the woman) who pleases him (her husband) when he looks (at her), obeys him when he asks (her to do something), and does not do against his (will) regarding what he dislikes in her or regarding his property.*"[2]

6. **To be fertile,** for it has been narrated on the authority of Ma`qil Ibn Yasâr that the Prophet (PBUH) said, "*Marry affectionate and fertile females, for I will be proud of your numerousness before (the other) nations on the Day of Resurrection.*"[3]

The Qualities Desired in a Husband

1. **To be religious,** because Almighty Allah says, ﴾*... and verily, a believing slave is better than a (free) Mushrik (idolater, etc.), even though he pleases you...*﴿ (Qur'ân: 2: 221)

2. **To know at least some part of the Qur'ân,** because the Prophet (PBUH) married one of his

[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by An-Nasâ'î and Ahmad.
[3] Narrated by Abû Dâwûd and An-Nasâ'î.

Companions off for what he had memorized from the Qur'ân.[1]

3. **To have the ability to get married** in respect to intercourse as well as the expenses of marriage and that of living after it. The Prophet (PBUH) encouraged young men to get married whenever they have the ability to do so, and he said to Fâṯimah Bint Qays when Mu`âwiyah proposed to her, "*As for Mu`âwiyah, he is a poor man who has no property.*"[2]

4. **To be gentle with women**, because the Prophet (PBUH) said about Abû Jahm, who had also proposed to Fâṯimah Bint Qays, "*As for Abû Jahm, he does not put down his staff from his shoulder,*" meaning that he was ready to beat those who would go against his will.

5. **To be attractive to his woman,** so that she may not feel disgust for him, as Almighty Allah says, ﴾*Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means...*﴿ Thus, this *qawâmah* (i.e., protection and maintenance), which men enjoy as regards their relation to women, resides in two things: (i) one thing which is temperamental, and it is represented by the qualities of creation by which man has been characterized; and (ii) one thing which is external (as the opposite of "temperamental)," and it is

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[1] Narrated by Al-Bukhârî and Muslim.

[2] Narrated by Muslim, An-Nasâ'î, and Abû Dâwûd.

man's supporting a woman financially. *Qawâmah* is established once these two things exist, and whenever one of them disappears *qawâmah* itself disappears and aversion appears.

6. **To be potent,** so that the wife can conceive and have children, and this is one of the major objectives of marriage. And, Allah knows best.

Khiṯbah (Engagement)

Khiṯbah or engagement is that a man presents a proposal of marriage seeking to marry a certain woman. If this proposal is accepted, then it becomes a mere promise of marriage and the suitor is not given any rights of a husband in his relation with his fiancée. She remains a foreign woman (*ajnabiyyah*) to him until he conducts a marriage contract.

The following are certain *shar`î* rulings which constitute the main rulings concerning *khiṯbah* in Islam.

Looking at a Would-be Wife

When a man intends to propose to a woman, it is lawful for him to look at her, and there is no difference among scholars concerning this point.[1]

This is indicated by the following texts:

Almighty Allah says,

﴿لاَ يَحِلُّ لَكَ النِّسَاءُ مِنْ بَعْدُ وَلاَ أَن تَبَدَّلَ بِهِنَّ مِنْ أَزْوَاجٍ وَلَوْ أَعْجَبَكَ حُسْنُهُنَّ﴾

﴾*It is not lawful for you (to marry other) women after this, nor to change them for other wives even though their beauty attracts you...*﴿

(Qur'ân: 33: 52)

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[1] *Al-Mughni*, 6/553.

A woman's beauty does not attract a man except when he sees her.

It has been narrated that Abû Hurayrah, may Allah be pleased with him, said,

> "I was in the company of the Messenger of Allah (PBUH) when there came a man and informed him that he had contracted to marry a woman of the Ansâr. Thereupon the Messenger of Allah (PBUH) said, '*Did you look at her?*' He said, 'No.' He (PBUH) said, '*Go and look at her, for there is something in the eyes of the Ansâr.*'"

It has been narrated that Sahl Ibn Sa`d, may Allah be pleased with him, said,

> "A woman came to the Messenger of Allah (PBUH) and said, 'O Messenger of Allah! I have come to give you myself in marriage (without *Mahr*).' The Messenger of Allah (PBUH) looked at her carefully and fixed his glance on her and then lowered his head..."[1]

And, Jâbir, may Allah be pleased with him, said that he heard the Messenger of Allah (PBUH) saying,

> "*Whenever any one of you (men) proposes to a woman and he can see of her some of what makes him yearn to (marry) her, let him do so.*"[2]

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Ahmad, Abû Dâwûd, and others.

To what extent is a man allowed to look at a would-be wife?

Scholars have differed concerning the extent to which a man is allowed to look at the woman he wants to marry.

What matters here is that the majority of scholars maintain that it is permissible to look at the face and the hands only.[1] However, the Hanbalîs say that it is permissible to look at what often appears of a woman like her neck, hands, and feet, whereas Al-Awzâ`î views that he can look at whatever he wants to see from her except her *`awrah*. Also, Ibn Hazm and Dâwûd are of the opinion that it is permissible for him to look at her whole body. Of course the last opinion means that this is to be done while she is wearing her clothes, and not naked as some may presume.

Shar`î **regulations concerning dealing with a would-be wife**

1. He should not look at her in private, but he should do that in the presence of some of her female *mahrams* or some her male *mahrams*.

2. He should not look at her with lust.

3. He should be sure that she would likely accept his proposal of marriage, or else he is not allowed to look at her.

4. It is not permissible for him to shake hands with her or touch any part of her body.

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[1] *Fathul-Bârî*, 9/182.

5. It is better to look at her before proposing to her if possible, because he may not like her if he does that after proposing to her, and this may harm one or both of them.

6. It is permissible for him to talk to her with consideration of the relevant *shar`î* limits, because her voice which is heard during her "normal" talking is not part of her *`awrah* according to the preponderant view in this connection.

7. He should not sit with her repeatedly, as some men would sit with their fiancées every day.

8. It is not permissible for him to go out with her without a *mahram*, for this may lead to dislikeable and disgraceful consequences.

Istiksârah Is Recommended

It is desirable for both the man who wants to marry and the woman to whom he has proposed to do *istikhârah* concerning their intended marriage.

In general, whenever a Muslim intends to do something legal and is bewildered concerning what is better for him in this concern, it is an act of the *Sunnah* that he performs two *rak`ahs* other than the obligatory prayers, even though they should be from among the regularly-performed voluntary prayers which are performed after or before the obligatory prayers and which are known as *rawâtib* (regularly-performed). This is called the *Istikhârah* Prayer, and *istikhârah* literally means "asking (Allah) for proper guidance".

For performing this prayer, the Muslim is to act as in the following *hadîth*:

It has been narrated by Al-Bukhârî and others that Jâbir Ibn `Abdullâh, may Allah be pleased with him, said,

> "The Prophet (PBUH) used to teach us the way of performing *istikhârah* in all matters as he would teach us a chapter (*sûrah*) from the Qur'ân. He (PBUH) said, *'If any one of you thinks of doing anything, he should offer a two-rak`ah prayer other than the obligatory ones and say (after the prayer), 'O Allah! I ask guidance from Your Knowledge and power from Your Power, and I ask for Your great Blessings. You are capable and I am not, You know and I do not, and You know the unseen. O Allah! If You know that this matter—naming (the matter in question or) what he needs—is good for my religion and my subsistence and in my (affair in the) Hereafter—or he said: if it is better for my present and later needs—then You ordain it for me and make it easy for me to obtain, and then bless it for me; and if You know that this matter is harmful to me in my religion and subsistence and in the Hereafter—or he said: if it is worse for my present and later needs—then keep it away from me and let me be away from it. And ordain for me whatever is good for me, and make me satisfied with it.'"*

It is also recommended that the man or the woman in question recites the invocation of *istikhârah* faithfully and sincerely, and there is no harm if they do that for a number of times.

It should moreover be known that it is not necessary that the person who performs this prayer sees in a vision after it the result of his or her *istikhârah*, or that they feel liking or disliking as to the matter in question. This is because this may or may not happen, and in either case what matters is that you should believe – as you have invoked Allah sincerely – that what is going to happen is good for you whether it comes in conformity with your will or not. So, just be satisfied with what Allah has predestined for you and this in its own right is good for you under all circumstances.

Proposing to an Engaged Woman

When a man proposes to a woman to take her in marriage, it is not lawful for anyone else to propose to the same woman, because the Prophet (PBUH) said,

> "*... and a man is not to propose to a (woman) engaged to his (Muslim) brother until he marries (her)* or *leaves (her).*"[1]

This means that he must not propose to her as long as she is engaged to another man, then if the latter marries her the former will not have any access to her, and if the engagement is revoked he can propose to her.

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[1] Narrated by Al-Bukhârî and Muslim.

Any one who acts against this *shar`î* rule is sinful and has committed an act of disobedience (*ma`siyah*) as agreed upon by scholars.

The question is: What is the *shar`î* ruling if a man marries a woman while she is engaged to another man? Is this marriage valid or not?

The marriage is valid though the husband is sinful, because "not proposing to an engaged woman" is not a condition of the validity of marriage. Therefore, if this forbidden act is committed, it does not invalidate the marriage itself.[1]

Proposing to a Woman during Her *`Iddah* (Waiting Period)

A *mu`taddah*, that is, a woman having a waiting period, normally has one of three cases, as follows,

1. To have a waiting period as a result of her husband's death, and in this case it is not permissible for any man to propose to her explicitly, yet he can express his desire to marry her indirectly. Almighty Allah says,

﴿وَلاَ جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُم بِهِ مِنْ خِطْبَةِ النِّسَاء أَوْ أَكْنَنتُمْ فِي أَنفُسِكُمْ عَلِمَ اللّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِن لاَّ تُوَاعِدُوهُنَّ سِرّاً إِلاَّ أَن تَقُولُواْ قَوْلاً مَّعْرُوفاً وَلاَ تَعْزِمُواْ عُقْدَةَ النِّكَاحِ حَتَّىَ يَبْلُغَ الْكِتَابُ أَجَلَهُ وَاعْلَمُواْ أَنَّ اللّهَ يَعْلَمُ مَا فِي أَنفُسِكُمْ فَاحْذَرُوهُ وَاعْلَمُواْ أَنَّ اللّهَ غَفُورٌ حَلِيمٌ﴾

[1] *Fathul-Bârî*, 9/200.

﴾*And there is no sin on you if you make a hint of betrothal or conceal it in yourself, Allah knows that you will remember them, but do not make a promise of contract with them in secret except that you speak an honourable saying according to the Islamic law.*[1] *And do not consummate the marriage until the term prescribed is fulfilled. And know that Allah knows what is in your minds, so fear Him. And know that Allah is Oft-Forgiving, Most Forbearing.*﴿

(Qur'ân: 2: 235)

One of the forms of such indirect reference to betrothal is what Ibn `Abbâs, may Allah be pleased with him, said when commenting on the words, ﴾*... if you make a hint of betrothal...*﴿ He said,

> "A man may say, 'I want to marry, and I wish I could easily find a righteous woman.'"[2]

2. To have a waiting period because of revocable divorce, i.e., after the first or the second divorce, and in this case it is not permissible for a man at all to propose to her whether directly or indirectly, simply because she is still a wife. Even an indirect reference to betrothal in this case is a violation of her husbands' right to taking her back and a way of encouraging her to refuse the revocation of the divorce.

3. To have a waiting period because of irrevocable divorce, i.e., after the third divorce,

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[1] e.g., you can say to her, "If one finds a wife like you, one will be happy."

[2] Narrated by Al-Bukhâri and Al-Tabari.

and in this case it is not permissible for a man to propose to her directly. Yet, scholars have differed concerning the question whether a man can make an indirect reference to betrothal or not: some say this is permissible and some maintain otherwise. Those who view that it is permissible say that this is because the divorce is irrevocable and so she has separated completely from her first husband.

It has been narrated that the Prophet (PBUH) said to Fâṯimah Bint Qays, who had been divorced irrevocably,

> *"Spend your waiting period at Ibn Umm Maktûm's, for he is a blind man and you can put off your clothes (without being afraid that he may see you). And, let me know when the period ends."*[1]

The words "let me know" represent an indirect reference to her betrothal, and this what happened after the end of her waiting period as the Prophet (PBUH) married her to Usâmah Ibn Zayd, may Allah be pleased with him.

On the other hand, those who maintain that even it is not permissible to make an indirect reference to betrothal in this case say that this is because this may encourage her to declare the expiry of her period before its time so that she can get married to the man in question soon.

The first view is preponderant, and Allah knows best.

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[1] Narrated by Muslim.

Marriage Contract

The Pillars of Marriage Contract

There are two pillars of marriage contract: **proposal** and **acceptance**

The Conditions of the Validity of Marriage Contract

1. The permission of *waliyy* (legal guardian)

A woman's *waliyy* is basically her father, or her brother, or her grandfather, or her parental uncle, or her paternal cousin.

The Prophet (PBUH) said,

> *"Whenever a woman marries without the permission of her waliyy, her marriage is invalid," repeating it three times, "and she deserves a mahr in return for what he (the husband) has got from her. If they should dispute (concerning this), then the sultân (caliph, ruler, etc.) is the waliyy of whoever has no waliyy."*[1]

Moreover, when speaking about the *'urfî* (informal) marriage, we quoted a number of items of proofs which confirm that *waliyy* is stipulated for the validity of marriage contract.

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[1] Narrated by Ahmad, Abû Dâwûd, and others.

2. The acceptance of woman before contracting the marriage

This means that if a woman is coerced to get married and the marriage is contracted while she does not accept it, the contract is to be revoked.

It has been narrated on the authority of Khansâ' Bint Khidâm Al-Ansâriyyah that her father gave her in marriage when she was a matron and she disliked that marriage. So, she went to the Messenger of Allah (PBUH) and he declared that marriage invalid.[1]

It has also been narrated that Ibn `Abbâs, may Allah be pleased with him, said that a virgin girl came to the Prophet (PBUH) and told him that her father gave her in marriage and she disliked that marriage, and the Prophet (PBUH) gave her the right to choose (whether to cancel the marriage or remain a wife of the man in question).[2]

3. *Sadâq* (Islamic Dowry)[3]

It is also called "*mahr*," and it is one of the conditions of the validity of marriage. The Mâlikîs maintain that even if the spouses agree that there is no *mahr* the marriage will be invalid. Thus, *sadâq* is a must in marriage, and more light will be shed on

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[1] Narrated by Al-Bukhârî and others.

[2] Narrated by Abû Dâwûd and Ibn Mâjah.

[3] The word "Islamic" is attached here to the word "dowry" so that it may not be confusing as the word "dowry" – as well as the word "dower" – is normally used by English-speaking people to mean "Money or property brought **by a bride to her husband** at marriage," while in Islam *sadâq* is paid by a husband to his bride. That is why either the word "*mahr*" or the word "*sadâq*" will be used to refer to this "Islamic dowry".

this condition when dealing with *ṣadâq* in detail later on, Allah willing.

4. Witnesses

Most scholars maintain that witnesses are one of the conditions of marriage validity, and they prove that with an addition in the *ḥadîth* reading

> *"There is no (valid) marriage except with a waliyy."*

This addition is:

> *"and two upright witnesses."*[1]

However, all the ways of transmission concerning this addition are of weak authority.

Ash-Shâfi`î says in his *Al-Umm* that even though the transmission of this addition lacks strength of authority, most scholars act upon it. He also says that the difference between marriage and *zinâ* is the witnesses.[2]

Also, At-Tirmidhî says right after this *ḥadîth* that scholars from among the Prophet's Companions, their successors, and others assert that there is not marriage without witnesses. At-Tirmidhî adds that only some of the later scholars maintain otherwise.

Finally, it may be said that it is "more becoming" that there be upright witnesses to testify to the marriage contract, and Allah knows best.

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[1] See *Jâmi`u Aḥkâmin-Nisâ'*, 3/321.
[2] See Ash-Shâfi`î, *Al-Umm*, 2/168.

Conditioning in Marriage Contract

Conditioning in marriage contract can be divided into three sections:

1. Conditions that must be fulfilled, and these include, for example, the woman's conditioning that her husband must live with her honorably[1] or release her with kindness[2].

2. Conditions that are not to be fulfilled, such as a woman's conditioning that her co-wife must be divorced, because the Prophet (PBUH) said, as narrated on the authority of Abû Hurayrah, may Allah be pleased with him,

> "*It is not lawful for a woman (at the time of wedding) to ask for the divorce of her sister (i.e. the other wife of her would-be husband) in order to have everything for herself, for she will take only what has been written for her.*"[3]

Another similar condition is that a woman stipulates that her husband must not have intercourse with her.

It is not obligatory to fulfill such conditions, as agreed upon by scholars.

Attached to this kind of conditioning is any stipulation that is in contradiction with the Qur'ân or the *Sunnah*, for the Prophet (PBUH) said,

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[1] See the Qur'ân: 4: 19.
[2] See the Qur'ân: 2: 229.
[3] Narrated by Al-Bukhârî and Muslim.

"Whoever imposes conditions which are not in Allah's Book (Laws), his conditions will be invalid even if he should impose them a hundred times."[1]

3. Conditions that are between this and that, such as a woman's conditioning that her husband must not marry any other woman as long as she is his wife, or that he must not make her depart from his country, and the like. Scholars have differed concerning the permissibility of such conditions, but the preponderant view is that it is not permissible for a woman to impose such conditions, but her husband is to fulfill her conditions as long as they do not contradict the Qur'ân or the *Sunnah*. The Prophet (PBUH) said, *"The conditions which are the worthiest in terms of fulfillment are those according to which you have been given legal access to women (through marriage)."*[2]

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Al-Bukhârî and Muslim.

S̲adâq (Dowry)

Definition

S̲adâq, also called "*mahr*," is terminologically the obligatory bridal money (or any form of property and the like) given by the husband to his wife at the time of marriage. This *s̲adâq* is either appointed by the ruler (and the judge) or according to an agreement between them.

The *Shar`î* Ruling concerning *S̲adâq*

S̲adâq is an integral part of marriage and one of the conditions of its validity. This *s̲adâq* is either specified before contracting marriage or not and in the latter case the bride is to receive a *mahr* like that of her peers. Almighty Allah says,

﴿وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِن طِبْنَ لَكُمْ عَن شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا﴾

﴾*And give to the women (whom you marry) their Mahr with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful).*﴿

(Qur'ân: 4: 4)

Al-Qurt̲ubî says in his *Tafsîr* (5/24),

"This verse proves that *ṣadâq* is obligatory for woman, and this (ruling) is agreed upon (by scholars), and there is no difference concerning it."

Almighty Allah also says,

﴿فَمَا اسْتَمْتَعْتُم بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً﴾

﴿*... so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed...*﴾

(Qur'ân: 4: 24)

And, the Prophet (PBUH) said to a man who wanted to get married, *"Go and bring (a mahr) even if it should be an iron ring."* When the man did not find any thing that he would pay as *mahr*, the Prophet (PBUH) asked him, *"Do you know anything from the Qur'ân (by heart)?"* The man said, "I know such and such *sûrahs* (chapters)." Thereupon he (PBUH) said, *"Go ahead! I have given her in marriage to you for what you know from the Qur'ân (by heart)."*[1]

Furthermore, it has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that when `Alî married Fâṯimah the Messenger of Allah (PBUH) said to him, *"Give her something (as mahr)."* He said, "I have nothing." He (PBUH) said, *"Where is your broad heavy armor?"* He answered, "I have it." He (PBUH) said, *"Then give it to her."*[2]

These textual proofs and other items of proof obviously indicate that *ṣadâq* is a pillar of marriage.

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[1] Narrated by Al-Bukhârî and Muslim.

[2] Narrated by Abû Dâwûd and An-Nasâ'î.

Yet still, it is not a condition that *ṣadâq* be appointed in the marriage contract because Allah says,

﴿لاَ جُنَاحَ عَلَيْكُمْ إِن طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً﴾

﴾*There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their Mahr...*﴿

(Qur'ân: 2: 236)

Ibnul-Jawzî commented,

> "This verse indicates that it is permissible to contract marriage without appointing the *mahr*."[1]

Any way, it is better to appoint the *mahr* when contracting marriage as a way of warding off disputes and quarrels, as stated by Ibn Taymiyah.

If the *mahr* is not appointed in the marriage contract, the woman in question is to receive a *mahr* equal to women like her, that is, her peers. It has been narrated that Ibn Mas`ûd judged concerning a woman whose husband died before consummating the marriage with her and he had not appointed any *mahr* for her, (Ibn Mas`ûd judged) that she should be given a *mahr* like that of her peers, that she deserved (in addition to that) her share in inheritance, and that she should maintain a waiting period. Ma`qil Ibn

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[1] *Zâdul-Masîr*, 1/279.

Sinân Al-Ashja`î testified that the Prophet (PBUH) gave a similar judgment concerning Burû` Bint Wâshiq.[1]

The Limit of *Sadâq*

Generally speaking, there is neither maximum nor minimum of the limit of *mahr*.

Scholars have agreed to the effect that there is no maximum limit of *mahr*, because there is no *shar`î* proof that specifies any such maximum limit of it. Ibn Taymiyah says,

> "If a well-to-do man likes to give his woman a big *sadâq*, there is no harm in that, as Almighty Allah says, ﴾*...and you have given one of them a Cantar (of gold i.e. a great amount) as Mahr...*﴿ (Qur'ân: 4: 20) What is legally detestable is that a man appoints a *mahr* and does not pay it or fails to pay it..."[2]

On the other hand, according to the most evident view, there is no minimum limit of *mahr*, as it is permissible to pay any thing that has a material or immaterial value as *mahr*. This view is in conformity with the correct meaning of *mahr* and the *shar`î* goal for which it has been enjoined. This is because what is meant by *mahr* is not a fiscal remuneration only, for it is also a symbol of man's desire and good intention as regards his uniting with the woman in

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[1] Narrated by Ahmad, Abû Dâwûd, At-Tirmidhî, An-Nasâ'î, and Ibn Mâjah.

[2] Ibn Taymiyah, *Fatâwâ*, 32/195.

question through marriage. That is why *mahr* can be paid mostly with something having a fiscal value as well as with something having a moral value as long as the wife accepts it.[1]

Moreover, it has been authentically narrated – as quoted earlier – that the Prophet (PBUH) gave a woman in marriage to a man for what he memorized from the Qur'ân. And, it has been narrated on the authority of Anas, may Allah be pleased with him, that Abû Talhah married Umm Sulaym, may Allah be pleased with both of them, and her *sadâq* was his conversion to Islam![2]

In addition to this, the Prophet (PBUH) regarded emancipation as a *mahr*, as it has been narrated also on the authority of Anas, may Allah be pleased with him, that he (PBUH) emancipated Safiyyâh and made (that) emancipation her *mahr*.[3]

Exaggeration in *Sadâq*

In Islam, there is no such exaggeration in *mahr* that some people adopt eagerly and indefatigably to the extent that some of them exaggerate in it regarding this as a field of competition and seek to achieve a record in it!

Woman is not a commodity that is to be sold or bought for money in a marriage market.

This exaggeration in *mahr* has led to a number of negative consequences, including the following,

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[1] *Fiqhuz-Zawâj*, p. 26.
[2] Narrated by An-Nasâ'î.
[3] Narrated by Al-Bukhârî and Muslim.

1. Most youths are still single and most girls have become spinsters.
2. Immorality has spread among youths in both sexes, as they have despaired of marriage so they seek an alternative to it.
3. Psychiatric diseases have spread among youths from both sexes as a result of repression and hopelessness.
4. Many youths disobey their parents and rebel against good conventions and customs.
5. A *waliyy* may refuse to give his daughter or sister to a poor righteous man in marriage because he wants to marry her to a man who would pay him a big *mahr* even if this man is irreligious.
6. A *waliyy* may overburden the bridegroom with many demands which are beyond his capacity. This may inculcate hatred in him toward his wife and her family and the bad consequences of this may bitterly surface in the future.

The *shar`î* ruling concerning this exaggeration

First of all, the *Sharî`ah* advocates and prefers small *mahr*, as the Prophet (PBUH) said,

> *"The best of ṣadâq is the smallest."*[1]

After quoting a number of *ḥadîths* dealing with *ṣadâq*, Ibnul-Qayyim says that exaggeration in *mahr*

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[1] Narrated by Al-Ḥâkim.

is legally detestable and it diminishes the blessing of marriage and makes it difficult.[1]

Another important aspect here is that "if" exaggeration in *mahr* "overburdens" the husband, it becomes "legally dispraised". It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said to a man who married to a woman from the Anṣâr, "*For what (dower) did you marry her*?" He said, "For four *ûqiyyahs* (one *ûqiyyah* equals forty *dirhams*)." Thereupon the Messenger of Allah (PBUH) said, "*For four ûqiyyahs? It seems as if you dig out silver from the side of this mountain,*"[2] meaning: that is why you are prepared to pay such a large amount of dower.

The detestability of exaggeration in *mahr* depends on the financial condition of the husband, and thus a well-to-man can give a big *mahr* to his wife. It has been narrated that the Negus gave Umm Habîbah, may Allah be pleased with her, to the Prophet (PBUH) in marriage and made her *mahr* four thousand (*dirhams*)[3] while a *mahr* of any other wife of the Prophet (PBUH) was four hundred *dirhams*. It has moreover been narrated that `Umar, may Allah be pleased with him, forbade people to exaggerate in *mahr* then a woman reminded him of the verse reading,

﴿وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَاراً فَلاَ تَأْخُذُوا مِنْهُ شَيْئاً﴾

﴾... *and you have given one of them a*

[1] *Zâdul-Ma`âd*, 5/178.
[2] Narrated by Muslim and An-Nasâ'i.
[3] Narrated by Abû Dâwûd and others.

Cantar (of gold i.e. a great amount) as Mahr, take not the least bit of it back...﴾

(Qur'ân: 4: 20)

So, he said to the people,

> "I have forbidden you to exaggerate in *mahr*. Now behold! Let every man do whatever he wants with his property."[1]

To recapitulate, as people differ in terms of richness and poverty, the financial condition of the husband is to be considered and he should not be overburdened with demands that he cannot fulfill. Thus, if he is well-to-do, there is no detestability if he pays a big *mahr* unless this is coupled with an intention of bragging and the like, as then it becomes detestable, and Allah knows best.

What Confirms a Woman's Right to the Whole *Sadâq*

A woman has a full right to her whole *sadâq* if any of the following takes place,

1. If actual consummation of marriage takes place, the wife deserves the whole *sadâq*. By "actual" we mean that once the husband consummates the marriage with his wife and "has intercourse with her," she deserves her whole *sadâq* because the husband will have already obtained his own right by this actual consummation. Almighty Allah says,

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[1] See *Jâmi'u Ahkâmin-Nisâ'*, 3/301. N.B.: According to Al-Albânî, this narration is of a weak chain of transmission; see *Al-Irwâ'*, 6/348.

﴿وَإِنْ أَرَدْتُمُ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَاراً فَلاَ تَأْخُذُوا مِنْهُ شَيْئاً﴾

﴿*But if you intend to replace a wife by another and you have given one of them a Cantar (of gold i.e. a great amount) as Mahr, take not the least bit of it back...*﴾

(Qur'ân: 4: 20)

Also, the Prophet (PBUH) said,

> "*Whenever a woman marries without the permission of her waliyy, her marriage is invalid,*" *repeating it three times,* "*and she deserves a mahr in return for the sexual privilege he (the husband) has to her.*"[1]

Here *mahr* is confirmed as being a right of a woman whose marriage is invalid, so it is more befitting that it be confirmed in valid marriage.

2. If one of the spouses dies before consummating the marriage, which is a valid one, the wife deserves the whole *sadâq*, as unanimously agreed upon by scholars,[2] as long as the *sadâq* was appointed in the marriage contract, because the contract is not cancelled because of death.

If, however, the *sadâq* was not appointed in the marriage contract, the wife in question deserves a *mahr* equal to her peers. It has already been mentioned that the Prophet (PBUH) gave that judgment concerning the case of the daughter of Wâshiq and so did Ibn Mas`ûd.

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[1] Narrated by Ahmad and others.
[2] *Bidâyatul-Mujtahid*, 2/22.

3. If a correct *khalwah* (privacy) takes place between the spouses after contracting the marriage yet before consummating it, the woman deserves the whole sadâq. "Correct *khalwah*" means that the husband and his wife live together – after contracting a valid marriage – in a place where they can sexually enjoy each other completely without fearing that anyone should enter as they do that, and on condition that neither of them has any natural, sensual, or legal impediment that prevents the undertaking of such enjoyment.[1]

According to a number of scholars from among the Companions and others, if such correct *khalwah* takes place then the husband divorces his wife – even if he does not consummate the marriage – the woman has the right to the whole *mahr*, and not half of it. To illustrate this, `Umar, may Allah be pleased with him, said,

> "If screens are let down (thus hiding the spouses behind), (the woman's right to the whole) *sadâq* is confirmed."[2]

On the other hand, some scholars, including Ibn `Abbâs, maintain otherwise and say that she deserves only half of the *sadâq*. Almighty Allah says,

﴿وَإِن طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ﴾

﴿*And if you divorce them before you have touched (had a sexual relation with) them,*

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[1] Ibn `Âbidîn, *Raddul-Mihtâr*, 2/338)
[2] Narrated by Mâlik and Al-Bayhaqî.

and you have appointed unto them the Mahr, then pay half of that (Mahr)...﴾

(Qur'ân: 2: 237)

4. If the husband divorces his wife during his death illness to deprive her of inheritance before consummating the marriage, the woman deserves the whole *sadâq*. This is according to the Hanbalîs.[1]

5. If a woman stays for a year at her husband's house before consummating the marriage and without having intercourse with her, she deserves the whole *sadâq*. This is according to the Mâlikîs, unlike the view of the majority of scholars.[2]

What Confirms a Woman's Right to Half of the *Sadâq*

The wife has the right to get half of her *sadâq* if she is divorced before consummation of the marriage and the *sadâq* has been appointed in the marriage contract. Almighty Allah says,

﴿وَإِن طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ﴾

﴾*And if you divorce them before you have touched (had a sexual relation with) them, and you have appointed unto them the Mahr, then pay half of that (Mahr)...*﴿

(Qur'ân: 2: 237)

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[1] *Al-Mughnî*, 1/157.

[2] *Al-Fiqhul-Islâmî wa Adillatuh*, 7/292.

Delaying the *Sadâq* and Paying It in Advance

It is permissible to either pay the *sadâq* in advance – including paying it on contracting the marriage – or delay it. It is also permissible to pay a part of it in advance and delay the other part. This is all because *sadâq* is some kind of remuneration so it is permissible to deal with it as prices of commodities and the like.

The woman is to receive the part of *sadâq* that is paid in advance before consummation of the marriage, and she has the right to prevent her husband from having access to her until she gets it.

The delayed part of the *sadâq* is appointed according to the agreement of the spouses, and it is delayed until after the consummation of the marriage.

It is desirable that the *sadâq* is paid in advance because Almighty Allah says,

﴿وَلاَ جُنَاحَ عَلَيْكُمْ أَن تَنكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ﴾

﴿*... And there will be no sin on you to marry them if you* ***have paid*** *their Mahr to them...*﴾

(Qur'ân: 60: 10)

It is also because the Prophet (PBUH) ordered `Alî to give Fâtimah, may Allah be pleased with both of them, something (as *mahr*) then he ordered him to give her his armor, as mentioned before.

After all, *sadâq* is a debt that a woman owes her husband and it is desirable that debts be paid back to those to whom they are due as soon as possible.

The conditions of delaying *ṣadâq*

Two conditions[1] are to be met so that the delaying of *ṣadâq* can be permissible:

1. The delay term must be defined, and it is not to be unknown as to make the delay until the husband dies or when the spouses separate.

2. It must not be too long because this may be for disclaiming the *ṣadâq*.

The Muslim should not delay the payment of the *ṣadâq* until death or divorce, because especially in the latter case the husband may keep his wife in wedlock though he dislikes her merely because he does not want to or cannot pay the delayed part of the *ṣadâq*. Also, he may mistreat his wife to oblige her to dispose of her financial rights. Thus, spouses should start their life together without such expected hindrances. After all, such delaying of *ṣadâq* was not known during the lifetime of the Prophet (PBUH), and we should not treat marriage as commodities for which prices (or compensations) are paid in different ways.

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[1] *Fiqhuz-Zawâj*, p. 60.

Proclaiming and Celebrating Marriage

Proclamation of Marriage

Proclamation of marriage is to publicize it and let people know that such and such a man has taken such and such a woman in marriage.

This proclamation of marriage is **desirable** according to the majority of scholars. However, Az-Zuhrî maintains that it is **obligatory**, and if a man marries a woman in secret, makes two men witness it, and orders them to keep this secret, the spouses must be separated.[1]

How Marriage Is to Be Proclaimed

Marriage is proclaimed by women's beating *duff* (tambourines) and singing permissible songs. Such singing – on such an occasion – is lawful as long as it is free from abominable and immoral things such as saying immoral words by immoral women or men, and as long as there are no musical instruments other than *duff*.

It has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that she prepared a woman for a man from the Anṣâr as his bride and the Prophet (PBUH) said, "*O `Â'ishah! Did you get any (lawful) amusement? The Anṣâr like amusement.*"[2]

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[1] *Al-Mawsû`atul-Fiqhiyyah*, 5/262, Kuwait.
[2] Narrated by Al-Bukhârî.

Also, it has been narrated on the authority of Ar-Rubayyi` Bint Mu`awwidh, who said that the Prophet (PBUH) came to her on the occasion of her marriage consummation. He sat down on her bed and small girls were beating a tambourine and singing in lamentation of her father who had been killed on the day of Badr. Then one of the girls said,

> "There is a Prophet amongst us who knows what will happen tomorrow."

The Prophet said (to her), "*Do not say this, but go on saying what you were saying earlier.*"[1]

Abominable Acts Related to Weddings

1. The bride's visiting the hairdresser's

This is one of the most abominable acts which are related to weddings and which have become an acceptable custom. It is quite immoral that the bride lets a strange man – and it is a man in most cases – touch her body and hair. And ironically, you may find that the same father who refuses that his son-in-law should touch his wife before the time of consummation allows a hairdresser to touch her many times while preparing her for the wedding party!

2. Women's seeing the `*awrah* of the bride

This is prohibited, for no woman is allowed to see the `*awrah* of another woman, because the Prophet (PBUH) said,

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[1] Narrated by Al-Bukhârî and others.

> *"No man is to look at the `awrah of another man or a woman to the `awrah of another woman."*

A woman's *`awrah* with regard to another woman is the same as a man's to another man: from the navel to the knees.

3. Persisting in celebrating weddings at hotels where abominable acts are committed

This act has a double abominable aspect: extravagance and immorality.

4. The bride's showing her adornment in public

A bride has the right to adorn herself as she likes but this adornment is not to be seen by marriageable men.

5. The newlyweds' sitting together amongst strange men and women

This is a heinous mistake because it at least enables marriageable men and women to intermingle with and look at one another, especially with the fact that women are normally in full adornment in weddings.

6. Some women may dance during the celebration

This dancing is prohibited if it is seen by men, and it is better to prevent it if it is done before women and in a place specified for them because dancing is normally coupled with prohibited music and immoral singing. It is also possible that a woman describes the

dancing of another woman to her husband and this may lead to great corruption and dissolution.

7. Recording wedding parties through photographing and video taping

This is abominable and heinous as it allows marriageable men and women – who will see and watch these photos and tapes – to see each other's adornments and charms in detail and with close examination.

8. Exaggeration in the wedding banquet

Nowadays people compete with one another as if in a race to spend as much money as possible for preparing the best and biggest possible banquets. As a result, large quantities of food are ruined while many people starve. After all, both boastfulness and extravagance are dispraised in Islam.

9. The newlyweds' neglecting prayer on their wedding day

The bride in particular normally prepares herself for the wedding from the noon time until she is carried to the bridegroom's house at night. Many brides and some grooms neglect prayer on their wedding day, forgetting that this is prohibited in principle and may deprive them of blessing at their wedding night.

The Wedding Banquet

The wedding banquet is a desirable confirmed act of the *Sunnah*, according to the view of the majority of scholars. However, Ash-Shâfi`î and Mâlik maintain that it is obligatory.

The Prophet (PBUH) prepared banquets when he married his wives and encouraged the Companions to prepare such banquets. It has been narrated by Al-Bukhârî and others on the authority of Anas, may Allah be pleased with him, that the Prophet (PBUH) prepared food for the people when he married Zaynab Bint Jahsh, may Allah be pleased with her. Moreover, it has been narrated that when `Abdur-Rahmân Ibn `Awf, may Allah be pleased with him, married, the Prophet (PBUH) said to him,

"Prepare a banquet even with a sheep."[1]

Still, it is not a condition that a sheep or anything else is presented in such a banquet, as the husband can present what he can easily find, for the Prophet (PBUH) presented *hays* as the banquet of his marriage to Safiyyah,[2] and *hays* consists of dates whose kernels have been removed and which have been mixed with cheese, flour, or other things.

Its time

Is the wedding banquet to be prepared at the time of contracting marriage, after it, at the time of consummating it, or after that?

The correct view in this regard is that the wedding banquet is to be prepared at the time of consummation or after it, and not at the time of contracting marriage. This has been derived from the *hadîth* narrated on the authority of Anas, may Allah be pleased with him, and in which he said that

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bukhârî and Muslim.

"... the Messenger of Allah (PBUH) became the bridegroom of Zaynab Bint Jahsh whom he married at Medina. After the sun had risen high in the sky, the Prophet invited the people to a meal..."[1]

Some scholars say that its time extends from the time of contracting marriage until the end of wedding.[2]

Inviting people to it

It is desirable that the bridegroom invites righteous people to his wedding banquet be they poor or rich, because the Prophet (PBUH) said,

> *"Do not make friends except with believers and let no one eat your food except those who are pious."*[3]

Answering the invitation to it

The majority of scholars maintain that whoever is invited to a wedding banquet must answer the invitation unless he is hindered by a legal excuse. One of the items of proof in this connection is the *hadîth* narrated by Ibn 'Umar, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Whenever any one of you is invited to a banquet, he should go to it."*[4]

Among the legal excuses with which the Muslim is allowed not to answer an invitation to a banquet,

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Al-Mâwardî, *Al-Insâf*, 8/317.
[3] Narrated by Abû Dâwûd and At-Tirmidhi.
[4] Narrated by Al-Bukhârî.

1. To be invited to a place where prohibited things such as intoxicants are served and the like. But he may attend such banquets only for the sake of forbidding such wrong things, with consideration for the principle of enjoining good and forbidding wrong.

2. To be invited by a man who invites the rich people only.

3. To be invited by a man who is known for seeking ill-gotten profits and indulging in doubtful and shady matters and the like.

The bride can serve her husbands' guests on her wedding day

It has been narrated that Sahl Ibn Sa'd, may Allah be pleased with him, said,

> "Abû Usayd As-Sâ'idî invited the Messenger of Allah (PBUH) to his wedding party and his wife, who was the bride, served them on that day. Do you know what drink she gave to the Messenger of Allah (PBUH)? She had soaked some dates (in water) for him overnight, and when he had finished his meal she gave him that drink (of soaked dates)."[1]

This act of serving can be done as long as there is no seduction and the like, and Allah knows best.

Congratulation on Marriage

It is legally desirable for those who are keen on following the *Sunnah* to say to the newlyweds,

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[1] Narrated by Al-Bukhârî, Muslim, and Ibn Mâjah.

"May Allah bless (it) for both of you, bestow blessings upon you both, and bring you together in goodness!"

This is what the Prophet (PBUH) used to say on similar occasions, as narrated on the authority of Abû Hurayrah, may Allah be pleased with him.[1]

It is also legally desirable that the Muslim gives something to the newlyweds as a present, because it has been narrated on the authority of Anas, may Allah be pleased with him, that when the Prophet (PBUH) married Zaynab, Umm Sulaym gave him *ḫays* as a present.[2] As explained earlier, *ḫays* consists of dates whose kernels have been removed and which have been mixed with cheese, flour, or other things.

The Proprieties of Wedding Night

The following are some of the proprieties that are to be considered at wedding night:

1. The bridegroom is recommended to greet his bride because this is apt to remove worry from her heart. It has been narrated on the authority of Umm Salamah, may Allah be pleased with her, that when the Prophet (PBUH) married her and wanted to enter upon her, he greeted her.[3]

2. The husband is recommended to present to his bride some drink or sweet as an initiation of his kind treatment to her. It has been narrated on the

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[1] Narrated by Abû Dâwûd and others.
[2] Narrated by Muslim.
[3] Abush-Shaykh, *Akhlâqun-Nabiyy*, p. 199.

authority of Asmâ' Bint Zayd that when the Prophet (PBUH) married `Â'ishah, may Allah be pleased with her, he presented milk to her and she drank from it.[1]

3. He is recommended to place his hand on her head and pray for her asking Allah to grant them blessing, as derived from the *Sunnah* of the Prophet (PBUH).[2]

4. He is recommended to perform two *rak`ah*s along with his bride. It has been narrated by Abû Sa`îd, Abû Usayd's *mawlâ* that when he was to marry a number of the Prophet's Companions, including Ibn Mas`ûd and Abû Dharr, taught him that after entering upon his bride he should offer two *rak`ah*s.[3]

5. It is desirable that he purifies his mouth with *siwâk* before entering upon her. He can also use a toothbrush and toothpaste for the same purpose. It has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that the Prophet (PBUH) used to start with using *siwâk* on entering his house.[4]

6. He is to recite *tasmiyyah*[5] and invoke Allah upon starting copulating with her. It has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"If any one of you, upon having sexual intercourse with his wife, says, 'Bismillâh, Allâhumma jannibni-sh-shayt̲ân wa jannibi-*

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[1] Narrated by Ah̲mad.
[2] Narrated by Abû Dâwûd and others.
[3] Attributed by Al-Albânî to Ibn Abû Shaybah.
[4] Narrated by Muslim.
[5] *Tasmiyah* is to say, "*Bismillâh* (In the Name of Allah)".

sh-shayṯâna mâ razaqtanâ (In the Name of Allah. O Allah! Ward Satan off me and ward Satan off whatever you (may) provide us!),' and if it is destined that they should have a child, then Satan will never be able to harm him."[1]

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[1] Narrated by Al-Bukhârî and Muslim.

A Spouse's Rights upon the Other Spouse

The Husband's Rights upon His Wife

The *shar`î* origin on which these rights have been based is the following verse,

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا﴾

﴿*Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore the righteous women are devoutly obedient (to Allah and to their husbands), and guard in the husband's absence what Allah orders them to guard (e.g. their chastity, their husband's property, etc.). As to those women on whose part you see ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly, if it is useful), but if they return to obedience, seek not against them means (of annoyance)...*﴾

(Qur'ân: 4: 34)

Thus, a man's right upon his wife is so great that the Prophet (PBUH) said,

> *"A husband's right over his wife is (so ascertained) that (even) if he had a fester and she licked it or his nostrils gushed out pus or blood and she licked that, she would not have fulfilled it (his right)."*[1]

The Prophet (PBUH) also said,

> *"Were I to command a person to prostrate himself before another person, I would have commanded women to prostrate themselves before their husbands."*[2]

Also, a woman's obedience to her husband is one of the things that confirm her admittance to Paradise, as the Prophet (PBUH) said,

> *"If a woman offers the five prayers (enjoined upon) her, observes fasting during the month (enjoined upon) her, protects her private parts (from illegal sexual acts, etc.), and obeys her husband, it will be said to her: enter Paradise from whatever gate of it you like."*[3]

Now it is time to pinpoint the husband's rights upon his wife, as follows:

1. To obey him, as the Prophet (PBUH) was asked about the best of women and he (PBUH) answered,

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[1] Narrated by Ibn Abû Shaybah in his *Musannaf*.
[2] Narrated by At-Tirmidhî and others.
[3] Narrated by Ibn Hibbân.

"*(She is the one) who obeys (her husband) whenever he orders (her), pleases (him) whenever he looks (at her), and guards him as regards herself and his property.*"[1]

However, it should be known that "*There is no obedience in (whatever involves) disobedience to Allah, for obedience is in what is good,*" as the Prophet (PBUH) said.[2]

2. To stay in the house (in principle) and not to leave it except with his permission, as Almighty Allah says,

﴿وَقَرْنَ فِي بُيُوتِكُنَّ وَلاَ تَبَرَّجْنَ تَبَرُّجَ الجَاهِلِيَّةِ الأُولَى﴾

﴿*And stay in your houses, and do not display yourselves like that of the times of ignorance...*﴾

(Qur'ân: 33: 33)

Imâm Ibn Taymiyah says,

"It is not lawful for a wife to go out of her house except with her husband's permission... and if she goes out of her house without his permission, then she is *nâshiz* (insubordinate), disobedient to Allah and His Messenger, and deserves punishment."[3]

3. To obey him when he calls her to bed, as it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

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[1] Narrated by An-Nasâ'î.
[2] Narrated by Al-Bukhârî and Muslim.
[3] *Fatâwâ*, 32/281.

"If a man calls his wife to his bed (for intercourse) and she refuses to come, the angels invoke curses upon her until she comes upon morning."[1]

4. Not to allow anyone to enter his house except with his permission, for the Prophet (PBUH) said,

"... You (men) too have over them (women) the right that they should not allow any one whom you do not like to sit on your beds..."[2]

He also said

"A woman is not to allow (anyone to enter) her husband's house in his presence except with his permission."[3]

5. Not to observe any voluntary fasting while he is present (i.e., not traveling) except with his permission, as it has been narrated by Al-Bukhârî and Muslim on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

"It is not lawful for a woman to observe (voluntary) fasting while her husband is present (i.e., not on a journey) except after taking his permission, nor is it (lawful) for her to permit anyone to his house except after taking his permission."

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Muslim.
[3] Narrated by Muslim.

6. Not to spend from his property except with his permission, because the Prophet (PBUH) said,

> *"A woman is not to spend anything form her husband's house except with his permission"*[1]

7. To serve him and his children, as Fâṯimah, the Prophet's daughter, used to serve her husband to the extent that she complained to the Prophet (PBUH) about the hardship she would encounter in using the hand mill.[2]

Also, Asmâ' Bint Abû Bakr, may Allah be pleased with her, stated that she used to serve Az-Zubayr Ibnul-`Awwâm (her husband) in all the service of the house, and she used also to groom his horse. She also said in the same narration,

> "I used to carry the date stones on my head from the land of Az-Zubayr which the Messenger of Allah (PBUH) had given to him, and it was at a distance of 2/3 of a *farsakh* (about two miles) from my house."[3]

It is worth mentioning here that scholars have differed as to whether it is obligatory or just desirable that the wife serves her husband. There is no doubt that this is part of the religious ordinance,

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى﴾

﴿*... Help you one another in Al-Birr and At-Taqwâ (virtue, righteousness and piety)...*﴾ (Qur'ân: 5: 2)

[1] Narrated by Abû Dâwûd and others.
[2] Narrated by Al-Bukhâri and Muslim.
[3] Narrated by Al-Bukhâri and Muslim.

Yet this does not mean that the husband should not help his wife in some of the housework, because the Prophet (PBUH) himself would help his wives in such work, as narrated by Al-Bukhârî on the authority of `Â'ishah, may Allah be pleased with her.

8. To guard him as regards her honor, his children, and his property, for Almighty Allah says,

﴿فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ﴾

﴾*... Therefore the righteous women are devoutly obedient (to Allah and to their husbands), and guard in the husband's absence what Allah orders them to guard (e.g. their chastity, their husband's property, etc.)...*﴿

(Qur'ân: 4: 34)

And, the Prophet (PBUH) said about the best of women, as quoted earlier, "... *and who guards him as regards herself and his property.*"[1]

9. To be grateful to him and live with him honorably, as it has been narrated on the authority of `Abdullâh Ibn `Amr, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

"Allah does not look at a woman who is not grateful to her husband while she cannot do without him."[2]

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[1] Narrated by An-Nasâ'î.
[2] Narrated by An-Nasâ'î.

Also, Al-Bukhârî and Muslim have narrated that the Prophet (PBUH) said that he saw Hell and observed that the majority of its inhabitants were women. The people asked him, "Why is that, O Messenger of Allah!" He said, *"Because of their ingratitude."* It was said, "Are they ungrateful to Allah?" He (PBUH) said,

> *"They are ungrateful to their husbands and do not show gratitude for the kindness (done to them by them). If you were to treat one of them kindly forever and she later saw anything (displeasing) in you, she would say, 'I have never seen any good in you!'"*

10. To adorn and beautify herself for him, as the Prophet (PBUH) said about the best of women, as quoted earlier, *"(She is the woman) who pleases him (her husband) when he looks (at her)..."*[1]

11. Not to remind him if she spends upon him and his children, as such reminding of favors is dispraised in Islam. Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ تُبْطِلُوا صَدَقَاتِكُم بِالْمَنِّ وَالأَذَى﴾

> ﴾*O you who believe! Do not render in vain your Sadaqah (charity) by reminders of your generosity or by injury...*﴿

(Qur'ân: 2: 264)

12. To be pleased with what he can afford and not to overburden him with what he cannot fulfill, as she must ponder on and act upon what Allah says in this regard,

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[1] Narrated by An-Nasâ'î and Ahmad.

﴿لِيُنفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنفِقْ مِمَّا آتَاهُ اللَّهُ لاَ يُكَلِّفُ اللَّهُ نَفْساً إِلاَّ مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْراً﴾

﴿*Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. Allah will grant after hardship, ease.*﴾

(Qur'ân: 65: 7)

13. Not to do what may harm or annoy him, as the Prophet (PBUH) said,

> *"When a woman annoys her husband in worldly life, his wife from Al-Hûr Al-`În (Houris, female fair ones with wide lovely eyes), says (to his worldly wife), 'Do not annoy him, may Allah curse you! He is (like) a stranger with you (in worldly life) and soon enough he will leave you to us.'"*[1]

14. To treat his parents and relatives kindly, for this is part of her treating him kindly as ordained by Allah and His Messenger.

15. To be keen on living with him and not to ask for divorce except for a *shar`î* reason, for the Prophet (PBUH) said,

> *"If a woman asks her husband for divorce without harm (inflicted upon her), she will be forbidden from the fragrance of Paradise."*[2]

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[1] Narrated by At-Tirmidhî and Ibn Mâjah.
[2] Narrated by At-Tirmidhî and others.

16. To mourn for him when he dies for four months and ten days, and this is also her *'iddah* as a widow.

The Wife's Rights upon Her Husband

Almighty Allah says,

﴿وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ﴾

﴿*... And they (women) have rights (over their husbands as regards living expenses, etc.) similar (to those of their husbands) over them (as regards obedience and respect, etc.) to what is reasonable...*﴾

(Qur'ân: 2: 228)

Allah also says,

﴿وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ﴾

﴿*... And live with them honourably...*﴾

(Qur'ân: 4: 19)

These Qur'ânic words include in general the rights of women upon their husbands, and the words ﴿*... And live with them honourably...*﴾ refer to many things and aspects. Yet, in the following lines concentration will be on certain rights as well as certain aspects of the comprehensive right of "living with one's wife honorably".

1. To pay her *ṣadâq*, as pinpointed in the section dealing with *ṣadâq*.

2. To support her financially, as ordained by the *Sharî'ah*, with consideration for the following verse,

﴿لِيُنفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْساً إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْراً﴾

﴿*Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. Allah will grant after hardship, ease.*﴾

(Qur'ân: 65: 7)

3. To treat her honorably and kindly, and this includes that he should not harm her or delay her rights though he is able to fulfill them without hesitation. In addition to the abovementioned verses, the Prophet (PBUH) said in an inclusive *hadîth*,

"The best of you is the best as regards his (dealing with his) family (including his wife, children, and relatives), and I am the best of you as regard my family."[1]

4. To play with her and consider her stage of lifetime as the Prophet (PBUH) – the best example for all husbands – used to do with his wives. It has been narrated that `Â'ishah, may Allah be pleased with her, said,

"(Some) Abyssinians were playing (displaying their skill with spears) and the Messenger of Allah (PBUH) screened me and I started looking (at them) until I myself felt (satisfied

[1] Narrated by At-Tirmidhî and Ibn Hibbân.

and) left, so consider (the needs of) young girls who crave after amusement."[1]

Moreover, he (PBUH) would also let her play with her dolls as well as her female friends, as narrated by Al-Bukhârî and Muslim.

5. To chat with her, as the Prophet (PBUH) would speak and listen to his wives. An example of this is a very interesting *hadîth* which is an illustrative quotation in this very paragraph as it is long yet the Prophet (PBUH) listened to `Â'ishah, may Allah be pleased with her, as she was telling him all about the story of Umm Zar`. The *hadîth* also illustrates significant aspects in the husband-wife relationship.

`Â'ishah, may Allah be pleased with her, said,

> "Eleven women sat (at a place) and promised and contracted that they would not conceal anything of the news of their husbands.
>
> The first one said, 'My husband is like the meat of a slim weak camel which is kept on the top of a mountain which is neither easy to climb nor is the meat fat so that one might put up with the trouble of fetching it.'
>
> The second one said, 'I shall not relate my husband's news, because I fear that I may not be able to finish his story, for if I describe him, I will mention all his defects and bad traits.'

[1] Narrated by Al-Bukhârî and Muslim.

The third one said, 'My husband, the "too-tall," if I describe him (and he hears of that) he will divorce me, and if I keep quiet he will keep me hanging (neither divorcing me nor treating me as a wife).'

The fourth one said, 'My husband is (moderate in temper) like the night of Tihamah: neither hot nor cold. I am neither afraid of him, nor am I discontented with him.'

The fifth one said, 'My husband, when entering (the house) is a leopard (sleeps a lot), and when going out is a lion (boasts a lot). He does not inquire after whatever is in the house.'

The sixth one said, 'If my husband eats he eats too much (leaving the dishes empty), and if he drinks he leaves nothing; when he sleeps he rolls himself (alone in our blankets); and he does not insert his palm to inquire about my feelings.'[1]

The seventh one said, 'My husband is a wrong-doer – or weak – and foolish. All defects are present in him, and he may injure your head or your body or may do both.'

The eighth one said, 'My husband is soft to touch like a rabbit and smells like a Zarnab (a kind of good smelling grass).'

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[1] By all this she means that her husband used to eat and drink a lot yet he was not that ready for the private relation with her.

The ninth one said, 'My husband is a tall generous man wearing a long strap for carrying his sword. His ashes are abundant (i.e., generous to his guests) and his house is near to the people (who would easily consult him).'

The tenth one said, 'My husband is *mâlik* (possessor), and what is *mâlik*? *Mâlik* is greater than whatever I say about him. Most of his camels are kept at home (ready to be slaughtered for the guests) and only a few are taken to the pastures. When the camels hear the sound of the lute (or the tambourine), they realize that they are going to be slaughtered for the guests.'

The eleventh one said, 'My husband (was) Abû Zar`. What (may one say in praise of) Abû Zar`? He gave me many ornaments and my ears were heavily loaded with them and my arms became fat (i.e., I became fat). He pleased me, and I became so happy that I felt proud of myself. He found me with my family who were mere owners of sheep and living in poverty, then he brought me to a respected family having horses, camels, and threshing and purifying grain. Whatever I said, he would not rebuke or insult me. When I slept, I would sleep until late in the morning, and when I drank water (or milk), I would drink my fill. As for the mother of Abû Zar`, what (may one say in praise of) the mother of Abû Zar`? Her saddle bags were always full of provision and her house

was spacious. As for the son of Abû Zar`, what (may one say in praise of) the son of Abû Zar`? His bed was as narrow as an unsheathed sword, and an arm of a four-month she-goat would satisfy his hunger. As for the daughter of Abû Zar`, what (may one say in praise of) the daughter of Abû Zar`? She was obedient to her father and to her mother. She had a fat well-built body and that aroused the jealousy of her husband's other wife. As for the slave girl of Abû Zar`, what (may one say in praise of) the slave girl of Abû Zar`? She did not reveal our secrets but kept them, and she would not waste our provisions or leave the rubbish scattered everywhere in our house.'

The eleventh lady added, 'One day it so happened that Abû Zar` went out at the time when the milk was being milked from the animals, and he saw a woman who had with her two boys like two leopards playing with two pomegranates under her flank. (On seeing her) he divorced me and married her. Thereafter I married a noble man who used to ride a fast tireless horse and keep a spear in his hand. He gave me many things, and also a pair of every kind of livestock and said, 'Eat (of this), O Umm Zar`, and give provision to your relatives.'

She added, 'Yet, all those things which my second husband gave me could not fill the smallest utensil Abû Zar` had.'"

`Â'ishah then said, "The Messenger of Allah (PBUH) said to me, '*I am to you as Abû Zar' was to his wife Umm Zar'*.'"[1]

6. The husband should teach his wife her religion and encourage her to obey Allah. Just as the husband is asked to treat his wife kindly as clarified above, he is also asked not to neglect teaching his wife her religion and urging her to obey Almighty Allah. This is simply because he is responsible for her and is asked to protect himself as well as his family from Hell-fire, as Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ﴾

﴾*O you who believe! Ward off from yourselves and your families a Fire (Hell) whose fuel is men and stones...*﴿

(Qur'ân: 66: 6)

Also, Umm Salamah, the Prophet's wife, may Allah be pleased with her, said that once the Prophet (PBUH) woke up one night and said,

"Glory be to Allah! How many treasures Allah has sent down! And how many afflictions have been sent down! Who will go and awaken the female dwellers (wives of the Prophet) of these rooms (for prayer)? A well-dressed (soul) in this world may be naked in the Hereafter."[2]

[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Al-Bukhârî.

7. To overlook some of her mistakes unless this contradicts Islamic laws, as this is recommended by the *Sharî`ah*. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"A believing man should not hate a believing woman; if he dislikes one of her characteristics, he (can) be pleased with another."*[1]

8. Not to harm her by slapping her face or finding fault with her, because the Prophet (PBUH) said to a man who asked him about a woman's right upon her husband, "*... and not to hit (or slap her) face or find fault with her...*"[2] The Prophet (PBUH) also said,

> *"No one of you should whip his wife as a slave is whipped then copulate with her at the end of the day."*[3]

It is worth mentioning here that it is lawful for a man to beat his wife if she is disobedient and insubordinate (*nâshiz*), yet this "must" be done in the light of the following verse,

> ﴾*... As to those women on whose part you see ill-conduct, admonish them (first), (next), refuse to share their beds,* ***(and last)*** *beat them (lightly,* ***if it is useful)****...*﴿

And meditate what Almighty Allah says right after that in the same verse,

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[1] Narrated by Muslim.
[2] Narrated by Abû Dâwûd and others.
[3] Narrated by Al-Bukhârî and Muslim.

﴿فَإِنْ أَطَعْنَكُمْ فَلاَ تَبْغُوا عَلَيْهِنَّ سَبِيلاً﴾

﴿*... but if they return to obedience, seek not against them means (of annoyance)...*﴾

(Qur'ân: 4: 34)

Accordingly, beating one's wife must be subjected to the following three regulations: (i) the beating is to be done if the wife in question is not reformed by means of admonition and refusal to share the bed with her; (ii) the beating must not be severe or of the kind that breaks her heart and bones; and (iii) it must be avoided if the wife returns to obedience.

9. To refuse to share the bed with her only in the house, because the Prophet (PBUH) said in the same *hadîth* in which he was asked about a woman's rights upon her husband, as quoted earlier, "*... and not to hit (or slap her) face or find fault with her, and do not refuse to share the bed with her except in the house.*"[1]

However, the husband may not share the bed with his wife inside the house if this is done for a *shar`î* interest, as the Prophet (PBUH) did not share the bed with his wives for a month and that was outside their houses. More light will be shed on this point in the section dealing with *îlâ'*,[2] Allah willing.

10. To help her be modest concerning their private relation, that is, the husband should

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[1] Narrated by Abû Dâwûd and others.

[2] Review this in the part dealing with "Separation between Spouses" in this book.

respond positively to his wife's desire when she needs him sexually in order to help her be modest and never think of any other illegal alterative. When `Abdullâh Ibn `Amr, may Allah be pleased with him, was totally preoccupied with worship, the Prophet (PBUH) said to him, "... *and your wife has a right upon you.*"[1]

There are other rights of the wife upon her husband, or in other words, there are other aspects of the general right of living with one's wife honorably. Yet, the above-mentioned rights and aspects may be sufficient for illustrating the wife's rights upon her husband.

[1] Narrated by Al-Bukhârî.

Polygamy

The *Shar`i* Ruling concerning Polygamy

Polygamy is allowed in Islam yet under certain restrictions. Almighty Allah says,

﴿وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُم مِّنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا﴾

﴾*And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or (the captives and the slaves) that your right hands possess. That is nearer to prevent you from doing injustice.*﴿

(Qur'ân: 4: 3)

Almighty Allah ordains that if a man fears that he will not be able to deal justly with his wives if he marries more than one wife, he must be content with one wife only or with the slaves that he possesses.

The Conditions of Polygamy

1. He must be able to deal with his wives justly, because Almighty Allah says,

﴿فَإِنْ خِفْتُمْ أَلاَّ تَعْدِلُوا فَوَاحِدَةً﴾

﴿... but if you fear that you shall not be able to deal justly (with them), then only one...﴾

(Qur'ân: 4: 3)

2. He must be sure that he will not be seduced by them in such a way with which he will neglect or violate Allah's rights. Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّ مِنْ أَزْوَاجِكُمْ وَأَوْلادِكُمْ عَدُوًّا لَّكُمْ فَاحْذَرُوهُمْ﴾

﴿O you who believe! Verily, among your wives and your children there are enemies for you (i.e. may stop you from obeying Allah), therefore beware of them...﴾

(Qur'ân: 64: 14)

3. He must have the physical ability to satisfy all of them so that they may not be driven – because of negligence and deprivation – to evil and immorality. We may here quote the following Prophetic order which is a general rule in its own right:

"O young people! Whoever among you is able (to marry) should marry..."[1]

Here marriage is connected to or based on the existence or non-existence of "ability".

4. He must be financially capable of supporting all of them, and here men are recommended to remember Allah's words,

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[1] Narrated by Al-Bukhârî and Muslim.

﴿وَلْيَسْتَعْفِفِ الَّذِينَ لاَ يَجِدُونَ نِكَاحاً حَتَّى يُغْنِيَهُمُ اللَّهُ مِن فَضْلِهِ﴾

﴿*And let those who find not the financial means for marriage keep themselves chaste, until Allah enriches them of His Bounty...*﴾
(Qur'ân: 24: 33)

The Wisdom behind the Legislation of Polygamy

The wisdom behind the legislation of polygamy represents – at the same time – the *shar`î* reasons that justify and permit polygamy. These matters or reasons of polygamy are known by all reasonable people. They include the following,

1. A man may be keen on increasing his progeny yet his "one" woman's menstruation, illness, postnatal bleeding, and other such hindrances may prevent him from achieving his goal as he wishes.

2. Men are – in most cases – less than women in number and are prone to causes of death more than women are in many fields of life. If all men were to marry only one woman each, so many women would remain unmarried, and that might in turn lead them to immorality and *zinâ*.

This may be observed clearly in countries where wars are waged every now and then.

We may also remind our readers in passing this of the Prophet's words concerning the portents of the Hour:

"*... and women will increase in number, so much so that fifty women will be looked after by one man.*"[1] Yet this does not mean that one man will marry fifty women all together.

3. "All" women may be ready to get married yet "a few" men are ready to meet the requirements of marriage especially those related to financing.

4. A man may have a sexual ungovernable nature to the extent that he will not be satisfied by one woman only, so he is allowed to gratify such abnormally strong lust legally by marrying more than one woman.

5. A man may marry – in addition to his wife – a female relative of his if her husband dies or divorces her and she has no one to support her except a married man.

Yet still, some people may misapply this allowance to the extent that many wrongly consider it – i.e., marrying a woman for the pinpointed purpose – a kind of meanness and ingratitude.

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[1] Narrated by Al-Bukhârî and Muslim.

Questions and Answers on Marriage

Q: What is the Islamic attitude toward physical desires in general?

A: Almighty Allah created man as His vicegerent on earth in order that he might populate and rule it. Obviously this purpose cannot be realized unless the human species perpetuates itself, living, thriving, cultivating, manufacturing, building, and worshiping its Creator. Accordingly, the Creator has placed certain appetites and drives in man so that he is impelled toward various activities which guarantee the survival of the species.

Among the appetites which an individual must satisfy for his personal survival is that of food and drink. The sexual appetite, however, is for the purpose of the survival of species. Thus, sex is a satisfaction and fulfillment. Human beings have responded to the demands of the sexual appetite in three different ways:

One way is to satisfy one's sexual need freely with whomever is available and whenever one pleases, without any restraints of religion, morality, or custom. This is the position of the advocates of free sex, for they do not believe in any religion. This philosophy reduces the human being to the status of an animal,

and, if practiced universally, would result in the destruction of the family structure and society.

The second approach is to suppress, and try to annihilate, the sexual drive. This approach is advocated by certain worldly philosophies which lead toward monasticism and an escape from the world. Such advocacy of suppression of a natural appetite, or rather annihilation of its functioning, is contrary to Allah's plan and purpose, and is in conflict with the course of the natural order which requires the use of this appetite for the continuity of life.

The third approach is to regulate the satisfaction of this urge, allowing it to operate within certain limits, neither suppressing it nor giving it free rein. This is the stand of the revealed religions, which have instituted marriage and prohibited fornication and adultery. In particular, Islam duly recognizes the role of the sexual drive, facilitates its satisfaction through lawful marriage, and just as it strictly prohibits sex outside marriage and even what is conducive to it, it also prohibits celibacy and the shunning of women. This is the just and intermediate position. And, Allah knows best.

Q: Is sexual perversion a major sin?

A: First of all, we must understand that in regulating the sexual drive Islam has prohibited not only illicit sexual relations and all ways which lead to them, but also the sexual deviation known as homosexuality. This perverted act is a reversal of the natural order, a corruption of man's sexuality, and a crime against the rights of females.

The spread of this depraved practice in a society disrupts its natural life pattern and makes those who practice it slaves to their lust, depriving them of decent taste, decent morals, and decent manner of living. The story of the people of Prophet Lûṯ (Lot) as narrated in the Qur'ân should be sufficient for us. Lûṯ's people were addicted to this shameless depravity, abandoning natural, pure, and lawful relations with women in the pursuit of an unnatural, foul, and illicit practice. That is why their Prophet, Lûṯ, peace be upon him, said to them,

﴿أَتَأْتُونَ الذُّكْرَانَ مِنَ الْعَالَمِينَ ۝ وَتَذَرُونَ مَا خَلَقَ لَكُمْ رَبُّكُم مِّنْ أَزْوَاجِكُم بَلْ أَنتُمْ قَوْمٌ عَادُونَ﴾

﴿*What! Of all creatures, do you approach males and leave the spouses whom your Lord has created for you? Indeed, you are people transgressing (all limits)!*﴾

(Qur'ân: 26: 165-166)

Any such abominable act is prohibited in Islam. And, Allah knows best.

Q: What is the *shar`î* ruling concerning masturbation?

A: The pressing need to relieve himself of sexual tension may drive a young man to masturbation.

The majority of scholars consider it prohibited. *Imâm* Mâlik bases his judgment on the following verse,

﴿وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ ۞ إِلاَّ عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ ۞ فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ﴾

﴾*Those who guard their sexual organs except with their spouses or those whom their right hands possess, for (with regard to them) they are without blame. But those who crave something beyond that are transgressors.*﴿

(Qur'ân: 23: 5-7)

He argues that a masturbator is one of those who "crave something beyond that".

On the other hand, it is has been reported that *Imâm* Ahmad Ibn Hanbal regards semen as an excretion of the body like other excreta and permits its expulsion as blood letting is permitted. Ibn Hazm holds the same view. However, the Hanbalîs permit masturbation only under two conditions: first, the fear of committing fornication or adultery, and second, not having the means to marry.

We may draw the attention of our readers to the idea that even if some scholars permit masturbation, this – in addition to the conditions pinpointed above – must not become excessive or a habit, for in both cases it becomes harmful—and no harming is permitted in Islam neither to oneself nor to others.

Finally, we may also remind our readers of the Prophet's words,

"O young people! Whoever among you is able (to marry) should marry, and whoever is not

able (to marry) is (recommended) to fast, as fasting diminishes his sexual power (positively)."[1]

This is better than indulging into such means as masturbation. And, Allah knows best.

Q: What is the *shar`î* ruling concerning monasticism?

A: Just as Islam is against fornication and adultery and blocks all ways leading to them, it is also against suppressing the sexual urge. Accordingly, it calls people toward marriage, prohibiting *tabattul* or renunciation which means remaining celibate and renouncing worldly activity for the sake of worship.

As long as he possesses the means to marry, the Muslim is not permitted to refrain from marriage on the grounds that he has dedicated himself to the service or worship of Allah and to a life of monasticism and renunciation of the world.

The Prophet (PBUH) noted a tendency toward monasticism among some of his Companions. Declaring this to be a deviation from the straight path of Islam and a rejection of his *sunnah* (recommended practice), he thereby rid Islam's conceptual framework of such a Christian notion. It has been narrated that Abû Qulâbah said,

"Some of the Companions of the Prophet (PBUH) decided to relinquish the world, forsake their wives, and become like monks. The Prophet (PBUH) said to them with

[1] Narrated by Al-Bukhârî and Muslim.

asperity, *'The people before you perished because of their asceticism; they made excessive demands on themselves until Allah brought hardships on them: you can still see a few of them remaining in monasteries and temples. Then worship Allah and do not associate anything with Him, perform Hajj and 'Umrah, be righteous, and all affairs will be set right for you'"*

Abû Qulâbah said that the following verse was revealed concerning them,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلاَ تَعْتَدُوا إِنَّ اللَّهَ لاَ يُحِبُّ الْمُعْتَدِينَ﴾

﴾O you who believe! Make not unlawful the Tayyibât (all that is good as regards foods, things, deeds, beliefs, persons, etc.) which Allah has made lawful to you, and transgress not. Verily, Allah does not like the transgressors.﴿

(Qur'ân: 5: 87)

Therefore, there is no monasticism in Islam. And, Allah knows best.

Q: Why is it prohibited for a Muslim woman to marry a non-Muslim man, including Christian and Jewish men, while a Muslim man is permitted to marry a Christian or Jewish woman?

A: It is prohibited for a Muslim woman to marry a non-Muslim man, regardless of whether he is of the

People of the Scripture (Jews and Christians) or not. Almighty Allah says,

﴿وَلاَ تُنكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّن مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ أُولَئِكَ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ﴾

﴾*... And give not (your daughters) in marriage to Al-Mushrikûn till they believe (in Allah Alone) and verily, a believing slave is better than a (free) Mushrik (idolater, etc.), even though he pleases you. Those (Al-Mushrikûn) invite you to the Fire, but Allah invites (you) to Paradise and Forgiveness by His Leave...*﴿

(Qur'ân: 2: 221)

Allah also says concerning the emigrant Muslim women,

﴿فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلاَ تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لاَ هُنَّ حِلٌّ لَّهُمْ وَلاَ هُمْ يَحِلُّونَ لَهُنَّ﴾

﴾*... then if you ascertain that they are true believers, send them not back to the disbelievers, they are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them...*﴿

(Qur'ân: 60: 10)

Thus, while a Muslim man is permitted to marry a Christian or Jewish woman, a Muslim woman is not allowed to marry a Christian or Jewish man. There

are many sound reasons for this difference. First, the man is the head of the household, the one who maintains the family, and he is responsible for his wife. And while Islam guarantees freedom of belief and practice to the Christian or Jewish wife of a Muslim, safeguarding her rights according to her own faith, other religions, such as Judaism and Christianity, do not guarantee the wife of a different faith freedom of belief and practice, nor do they safeguard her rights. Being so, how can Islam take chances on the future of Muslim women by giving them into the hands of people who neither honor their religion nor are they concerned to protect their rights?

A marriage between a man and a woman of different faiths can be based only on the husband's respect for his wife's beliefs; otherwise a good relationship can never develop. Now, the Muslim believes that both Judaism and Christianity "originated in divine revelation," although later distortions were introduced into them. Accordingly, the Christian or Jewish wife of a Muslim lives under the protection of a man who respects the "basic" tenets of her faith, her scripture, and her prophets, while in contrast to this a Jew or Christian man does not recognize the divine origin of Islam, or its Book, or its Prophet (PBUH). How then could a Muslim woman live with such a man, while her religion requires of her the observance of certain worships, duties, and obligations, as well as refraining from certain things? It would be impossible for a Muslim woman to retain her respect for her beliefs as well as to practice her religion properly if

she were opposed in this regard by the master of the house at every step. It is obviously impossible that two such people can live together in harmony and love. And, Allah knows best.

Q: What is the Islamic attitude toward marrying more than one woman?

A: Islam is a way of life which is consonant with nature, providing human solutions to complex situations and avoiding extremes. This characteristic of Islam can be observed most clearly in its stand concerning the taking of more than one wife. Islam permits the Muslim to marry more than one woman in order to resolve some very pressing human problems, individual as well as social.

Many people and religions prior to Islam permitted marriage to a host of women, whose number reached tens and sometimes hundreds, without any condition or restriction. Islam, on the other hand, laid down definite restrictions and conditions for polygamy. With regard to the restriction, it limited to four the maximum number of wives a man might have. And, Allah knows best.[1]

Q: Why was the Prophet (PBUH) permitted to marry more than four wives?

A: The case of the Prophet (PBUH), who had nine wives, was exempted from the prohibition of marrying more than four wives by Allah for the sake of the propagation of the message of Islam during his

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[1] For more details about polygamy in Islam you may review the section dealing with it in the part dealing with "Marriage" in this book.

lifetime and because of the need of the Muslim *Ummah* after his death. And, Allah knows best.

Q: Why is it that justice among wives is a condition?

A: The main condition which Islam lays down for permitting a man to have more than one wife is confidence on his part that he will be able to deal justly and equitably with his two or more wives regarding food, drink, housing, clothing, and expenses, as well as in the division of his time between them. Any one who lacks the assurance that he will be able to fulfill all these obligations with justice and equity is prohibited by Almighty Allah from marrying more than one woman. Almighty Allah says in this regard,

﴿وَإِنْ خِفْتُمْ أَلاَّ تُقْسِطُوا فِي الْيَتَامَى فَانكِحُوا مَا طَابَ لَكُم مِّنَ النِّسَاءِ مَثْنَى وَثُلاَثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلاَّ تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَى أَلاَّ تَعُولُوا﴾

﴿*And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or (the captives and the slaves) that your right hands possess. That is nearer to prevent you from doing injustice.*﴾

(Qur'ân: 4: 3)

Also, the Prophet (PBUH) said,

"Any one who has two wives and does not treat them equally will come on the Day of

Resurrection dragging one part of his body which will be hanging down."[1]

The equal treatment mentioned here pertains to the rights of the co-wives, not to the love their husband feels toward them, for equality in the division of love is beyond human capacity and any imbalance in this regard is forgiven by Almighty Allah, Who says,

﴿وَلَن تَسْتَطِيعُوا أَن تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ﴾

﴾*You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave the other hanging (i.e. neither divorced nor married)...*﴿

(Qur'ân: 4: 129)

That is why the Prophet (PBUH) used to divide his time among his wives equally, and he said,

"O Allah, this is my division in regard to what I can control. Then (please) do not hold me accountable regarding what You control and I do not control,"[2]

referring to the attachment and affection which he felt for one particular wife. And, Allah knows best.

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[1] Narrated by Ibn Hibbân and others.
[2] Narrated by An-Nasâ'i and others.

Q: Is it permissible for a man to marry his daughter who has come as a result of *zinâ* between him and her mother?

A: According to the majority of scholars, it is not permissible for a man to marry his daughter who has come as a result of his committing *zinâ* with her mother. This is simply because even such a daughter is included in the general meaning of the following verse, ﴾*Forbidden to you (for marriage) are: your mothers, your daughters...*﴿ to the end of the verse. (Qur'ân: 4: 23)

Not only this, scholars have differed as to the *shar`î* ruling concerning a man who has already married his *zinâ*-produced daughter: should he be killed or not? According to Ahmad, he is to be executed.

Another ruling which is attached to this one is that a man is prohibited to marry his *zinâ*-produced sister, son's daughter, daughter's daughter, brother's daughter, and sister's daughter. And, Allah knows best.

Q: If a man conducts his marriage to a woman yet has not consummated the marriage yet, can his son marry her after him?

A: Scholars have unanimously agreed that in this case it is prohibited for the son of this man to marry this woman even though his father did not consummate his marriage with her, and that this prohibition is forever. If, however, a son marries a woman who was once married to his father, he is to

be killed and his property is to be taken from him. It has been narrated that Al-Barâ', may Allah be pleased with him, said that once he met his uncle and asked him where he was going. The man said, "The Messenger of Allah (PBUH) has sent me to a man who has married the wife of his father after him, to behead him and take his property."[1] And, Allah knows best.

Q: Does the prohibition of marriage because of foster relationship extend to the relatives of the male in question?

A: If a male is prohibited to marry any of certain females because of foster relationship, such as the woman who suckled him, her daughters, sisters, etc., this prohibition has nothing to do with this male's relatives. Accordingly, his foster sister, for example, is not a sister as to his brother. The general rule that governs this matter is that: those who suckle from one and the same breast are brothers (or sisters). This means that the brother of a person who suckled from a certain woman is not her son because he did not suckle from her as his brother did. This in turn means that the brother of the person who suckled can marry the daughter of this woman because she is marriageable to him even if she is unmarriageable to his brother. Important still, the term "relatives" here does not include the descendants of the person who suckles, as his son, for example, would not marry his (i.e., this person's) foster sister because she is a foster

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[1] Narrated by Abû Dâwûd and others.

paternal aunt as to this son, and so on.[1] And, Allah knows best.

Q: Does it make any difference – as regards the prohibition of marriage – if a male suckles the breast-milk of a woman through a cup for example?

A: The prohibition of marriage which comes as a result of breast-milk suckling is the same whether the milk is suckled directly from a woman's breast or is milked in a cup, for example, then drunk. This is according to the view adopted by the majority of scholars. And, Allah knows best.

Q: If a man married a woman then another woman claimed that she suckled both of them, what is the *shar`î* ruling concerning this?

A: In this case the man and his wife must be separated as long as the woman who has stated that she suckled them is an upright Muslim woman and there is a probability that this suckling was possible.[2] It has been narrated that `Uqbah Ibnul-Hârith said that a black woman came and claimed that she had suckled both `Uqbah and his wife. So, he mentioned that to the Prophet who turned his face from him and smiled and said, "*How (can you keep your wife) and it*

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[1] For more details about this point you may review the section dealing with foster relationship in the part dealing with "Marriage" in this book.

[2] This is because a woman who is twenty years old for example may claim that she suckled a man and a woman when they were two years old while these two are now in the same age of the woman in question.

was said (that both of you were suckled by the same woman)?"[1] And, Allah knows best.

Q: What is the *shar`î* ruling if a disbelieving man becomes a Muslim while being married to two sisters?

A: In this case he must divorce one of them, yet he can choose which of the two is to be divorced. It has been narrated that a man told the Prophet (PBUH) that he professed Islam while having two sisters in wedlock, and the Prophet (PBUH) said to him, "*Choose which of them you wish (to keep in wedlock),*"[2] meaning "and divorce the other one". And, Allah knows best.

Q: If a man is to marry a woman who has been divorced three times and it is stipulated (by someone, like her first husband for example) that this man must marry her in the way of *muhallîl* marriage, i.e., to marry her then divorce her especially for making her lawful again for her first husband, but this man marries her intending that this marriage is not a *muhallil* marriage, is this marriage valid?

A: If the man in question marries the woman in question because he really wants to marry her and thus conducts this marriage with this intention and not that of *muhallil* marriage, the marriage is valid because there is no intention of *tahlîl* (i.e., making her lawful for her ex-husband) and because the

[1] Narrated by Al-Bukhârî and others.
[2] Narrated by At-Tirmidhî and others.

intention here is like any intention of lawful marriage.[1] And, Allah knows best.

Q: What is the *shar`î* ruling concerning a man who marries a woman while intending to divorce her after a certain period of time?

A: This is done by many of those who travel abroad as it much happens that a man marries a woman belonging to the country to which he has traveled for the sake of having the right to stay in this country intending to divorce her when he is to go back to his homeland. Scholars say that this marriage is valid if he does not specify a certain period of time after which he will divorce her, because this man may intend something and does not do it or do something without intending it and in this case the action becomes disconnected with the intention.

Al-Awzâ`î however asserts that this marriage is a form of *mut`ah* (temporary) marriage and is thus forbidden.

Al-Awzâ`î's view may be more evident especially with the fact that such a form of marriage involves much deceit and cheat and is not based on a real desire of conducting marriage which is prescribed and permitted in Islam. And, Allah knows best.

Q: If a dissolute man proposes to a woman, is it permissible for a righteous man to propose to the same woman?

A: According to the most evident view in this regard, it is permissible for a righteous man to

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[1] See Ibn Qudâmam, *Al-Mughnî*, 6/648.

propose to this woman if she is righteous and religious, because much evil is expected to afflict her if she is left to marry such a dissolute man.[1] And, Allah knows best.

Q: What is the *shar`î* ruling concerning a man who marries a woman during her *`iddah* after the death of her husband?

A: They must be separated and she is to complete her *`iddah* related to her first husband then spend another *`iddah* related to her second marriage if the second husband consummated the marriage with her, and she can receive her *mahr* if she is ignorant of the ruling of her marrying during her *`iddah*. If however she married the second man while knowing that she was not allowed to do so, the ruler (and the judge) can either give her the *mahr* or deposit it in the public treasury as a kind of *ta`zîr* (discretionary punishment) for what she did. And, Allah knows best.

Q: Is it permissible for the second husband – in the previous question – to marry this woman after the two *`iddah*s are finished?

A: It has been narrated in this regard that `Umar Ibnul-Khaṯṯâb, may Allah be pleased with him, prevents such marriage while `Alî Ibn Abû Ṯâlib, may Allah be pleased with him, says that it is permissible.[2] And, Allah knows best.

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[1] See *Fatḫul-Bârî*, 9/200.
[2] *Jâmi`u Aḫkâmin-Nisâ'*, 3/229.

Q: Is it permissible for a father to present his daughter to a righteous man to marry her?

A: This is permissible, and that was what the righteous man did with Prophet Mûsâ (Moses), peace be upon him, when he said to him,

﴿إِنِّي أُرِيدُ أَنْ أُنكِحَكَ إِحْدَى ابْنَتَيَّ هَاتَيْنِ عَلَى أَن تَأْجُرَنِي ثَمَانِيَ حِجَجٍ فَإِنْ أَتْمَمْتَ عَشْراً فَمِنْ عِندِكَ﴾

﴿... *'I intend to wed one of these two daughters of mine to you, on condition that you serve me for eight years...'*﴾

(Qur'ân: 28: 27)

Also, it has been narrated on the authority of Ibn `Umar that `Umar Ibnul-Khattâb presented his daughter Hafsah to `Uthmân Ibn `Affân then to Abû Bakr, then the Prophet (PBUH) married her.[1] And, Allah knows best.

Q: Is it permissible for a man to mediate for proposing to or marrying some woman?

A: It is permissible for the Muslim to do so. It has been narrated that the Prophet (PBUH) interceded for Mughîth with Barîrah to marry him. She said, "O Messenger of Allah! Are you commanding me (to do so)?" He (PBUH) replied, "*I am only interceding for him.*" She said, "I have no need in him (as a husband)."[2] This *hadîth* may also indicate that whoever is to intercede or mediate so that a man can

[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bukhârî.

marry a certain woman should not practice any form of pressure upon the woman in question. And, Allah knows best.

Q: Does the *waliyy* of a woman have any right to her *sadâq*?

A: *Sadâq* is the right of a wife and not of her *waliyy*. Almighty Allah says,

﴿وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً﴾

﴾*And give to the women (whom you marry) their Mahr with a good heart...*﴿

(Qur'ân: 4: 4)

Allah also says,

﴿فَمَا اسْتَمْتَعْتُم بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً﴾

﴾*... so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed...*﴿

(Qur'ân: 4: 24)

There are other verses which indicate that a woman's *sadâq* is her right and so it is not lawful for her father or any other one to take any part of this *sadâq* without her permission. Unfortunately, a father would take the whole *sadâq* of his daughter as if he was selling her and the *sadâq* was the price. And, Allah knows best.

Q: What is the *shar`î* ruling concerning the gifts and presents that a suitor gives to his fiancée if he wants to cancel his engagement to her?

A: If he gave her anything as *mahr*, she must give it back to him if the engagement is to be cancelled. This is because *mahr* is paid in return for his enjoying her through marriage, and this has not happened, so the *mahr* must be paid back. This is the view adopted by the majority of scholars.[1]

If the suitor gave his fiancée something as a gift or a present and now "she" wants to cancel the enjoyment, she must give him his gift or present back. This is because it is not fair that the suitor should suffer two forms of pain: the pain of canceling his engagement and the pain of losing the value of his gift. On the other hand, if it is the man who wants to cancel the engagement, he has no right to get the gift back, also because it is not fair that the woman should suffer both the pain of canceling her engagement and that of losing the gift in question. This is the fairest view in this regard.[2] And, Allah knows best.

Q: What is the *shar`î* ruling concerning the house furniture and other such things that the bridegroom and his bride normally need to start a new marital life?

A: The husband is legally responsible for preparing the place in which he and his wife will live, and

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[1] *Bidâyatul-Mujtahid*, 2/21.

[2] See *Al-Ikhtiyârât*, 128.

this is to be done in accordance with his capacity. Almighty Allah says,

﴿أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُم مِّن وُجْدِكُمْ﴾

﴾Lodge them where you dwell, according to your means...'﴿

(Qur'ân: 65: 6)

﴿وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا﴾

﴾... but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear...﴿

(Qur'ân: 2: 233)

The wife however is not asked to prepare anything of this from her own property, and there is no proof which indicates that she must do that. Yet, if she willingly prepares something related to the furniture of the house or anything of the kind, there is no harm in this.[1] And, Allah knows best.

Q: What is the *shar`î* ruling concerning a person who is invited to a wedding banquet while he is fasting?

A: In this case he or she must answer the invitation because the majority of scholars maintain that it is obligatory – unless there is some legal excuse

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[1] See Ibn Hazm, *Al-Muhallâ*, 9/507.

– to answer the invitation to a wedding banquet. It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

> *"Whenever any one of you is invited to a banquet, he should go to it."*[1]

Concerning a fasting person, when he comes to the banquet place he has two options: either to break his fast and eat from it if the fasting is voluntary or to refuse to eat and he may instead pray for the person who has invited him. It has been narrated that the Prophet (PBUH) said,

> *"When any one of you is invited to a feast, he should accept it. He may eat if he likes, and he may abandon (eating) if he likes."*[2]

If he wants to pray for the person who has invited him, he may say for example,

> *"O Allah! Bless for them what you have provided them, forgive them, and have mercy upon them!"*[3]

And, Allah knows best.

Q: What are the proprieties of having intercourse with one's wife?

A: The following may be the most important proprieties related to having intercourse with one's wife:

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Muslim and others.
[3] Narrated by Muslim and others.

- It is desirable that the husband plays with his wife first, and this is known as foreplay.
- When he finishes with her, he should wait until she has been satisfied as well.
- He can have intercourse with her in any position he likes as long as it is done to her vagina.
- He can enjoy any part of her body except anal penetration.
- It is not permissible for a man to have intercourse with his wife during her period.
- He can have intercourse with her one time after another, yet it is desirable that he performs ablution before doing that for a next time.
- Both man and woman can be naked during the copulation.[1]
- It is not permissible for a wife to refuse when her husband asks her for intercourse.
- It is not permissible for any spouse to uncover the secrets of intercourse.
- When a husband wants to return from some journey, he should not surprise his wife and thus he should tell her about the date of his arrival.
- It is detestable for a husband to ejaculate outside his wife's vagina, as the Prophet

[1] There is a false statement attributed to the Prophet (PBUH) in which he prevents husband and wife from getting naked during copulation as a camel and a she-camel would do (also while copulating).

(PBUH) called this "hidden *wa'd*[1]"[2] And, Allah knows best.

Q: What is the *shar`î* ruling concerning contraception?

A: Contraception is legal as long as it is done according to the *Sharî`ah*. The first valid reason for employing contraception is the fear that the pregnancy or delivery might endanger the life or health of the mother. This can be indicated by past experience or the opinion of a reliable physician. Almighty Allah says,

﴿وَلاَ تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ﴾

﴾*... And do not be cast into ruin by your own hands...*﴿

(Qur'ân: 2: 195)

Another valid reason is the fear that the new pregnancy or a new baby might harm a previous suckling child, and in our modern time new methods of contraception are available which help a father and a mother to delay the pregnancy so that they may not harm their now suckling baby.

Interestingly enough, *Imâm* Ahmad maintains that contraception requires the consent of the wife, because she has a right both to sexual enjoyment (if the method to be used is avoiding her sexually or if it deprives her of sexual enjoyment) and to decide whether or not she wants a child. Also, it has been

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[1] *Wa'd* is burying alive a newborn girl, as the people used to do during the pre-Islamic period.

[2] Narrated by Muslim and others.

narrated that `Umar, may Allah be pleased with him, forbade the practice of coitus interruptus without the consent of the wife. This was, on the part of Islam, a noteworthy step toward establishing the rights of women in an age when they had no rights. And, Allah knows best.

Q: What is the *shar`î* ruling concerning abortion?

A: Islam does not allow doing violence to pregnancy. Muslim *faqîh*s unanimously agree that after the fetus has been completely formed and given a soul, aborting it is prohibited. This is because it is a crime which constitutes an offense against a complete, live human being even though it is still a fetus.

However, there is one exceptional situation. *Faqîh*s say that if it is reliably established – after the baby is completely formed – that the continuation of the pregnancy would necessarily result in the death of the mother, then abortion must be performed. This goes in accordance with the general principle of the *Sharî`ah* concerning the choosing of the lesser of two evils. And, Allah knows best.

Q: What is the *shar`î* ruling concerning a man who has married a fifth woman while having four in wedlock?

A: It is not permissible for a man to marry a fifth wife while having four wives in wedlock, and if he does, the marriage will be invalid. Mâlik and Ash-Shâfi`î assert that the legal punishment (of *zinâ*) is to be applied to him if he knew it was unlawful before

doing it. And Az-Zuhrî says that he is to be stoned to death if he was aware of the ruling concerning this before doing it, and if he did that out of ignorance, the lesser of the two legal punishments (of *zinâ*), i.e., lashing, is to be applied to him, the woman in question is to take her *mahr*, and they must be separated and never be united again (in wedlock). And, Allah knows best.

Q: Is it permissible for a man to keep more than one wife in one house?

A: In principle, he is to make a house for each wife because this is what the Prophet (PBUH) did. Ibn Qudâmah says that it is not permissible for a man to keep two wives together in one and the same house without their consent because this causes harm to them and stimulates jealousy and animosity between them.[1] And, Allah knows best.

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[1] See Ibn Qudâmam, *Al-Mughni*, 7/26-27.

Part Two

Separation between Spouses

Separation between spouses takes different forms. It can be in any of the following forms: *ṯalâq* (divorce), *khul`*, *li`ân*, *îlâ'*, and *ẕihâr*. Each form has its own meaning, rules, rulings, requirements, and consequences. On the following few pages, each one of these forms will be tackled in some detail.

T̲alâq (Divorce)

Definition and Legality

T̲alâq or divorce is simply "dissolution of the marriage union". It can also be defined as "the dissolution of marriage, or the annulment of its legality by the pronouncement of certain words".

The legality of divorce is supported by the Qur'ân and the *Sunnah*.

Almighty Allah says,

﴿الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾

> ﴿*The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness...*﴾
>
> (Qur'ân: 2: 229)

He also says,

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ﴾

> ﴿*O Prophet! When you divorce women, divorce them at their `iddah (prescribed periods)...*﴾
>
> (Qur'ân: 65: 1)

And, it has been narrated that `Abdullâh Ibn `Umar, may Allah be pleased with him, divorced his wife while she was menstruating so `Umar, may Allah be pleased with him, informed the Messenger of

Allah (PBUH) of that. He (PBUH) became very angry at that and said,

> *"Ibn `Umar must return her to his house and keep her as his wife until she becomes pure[1] and then menstruates and becomes pure again, whereupon, if he wishes to divorce her, he may do so while she is still pure and before having any sexual relations with her, for that is the legally prescribed period for divorce as Allah has ordered."*[2]

It has been described before that, according to Islam, marriage is a civil contract, yet the rights and responsibilities consequent upon it are of such importance to the welfare of humanity that a high degree of sanctity is attached to it. But, in spite of the sacredness of the makeup of the marriage tie, Islam recognizes the necessity of divorce in cases when marital relations are poisoned to a degree which makes a peaceful home impossible. Yet, Islam does not acknowledge unlimited opportunities for divorce on frivolous and insubstantial grounds, because any undue increase in those facilities for divorce is apt to destroy the stability of family life. Therefore, while allowing divorce even on genuine grounds, Islam has taken great care to introduce checks designed to limit the use of the available facilities.

That is why divorce is not to be considered except for legal requirements – as will be clarified later on – because it is enough for a faithful Muslim not to

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[1] "Pure" here refers to the case when a woman's menstruation period ends then she takes the required ritual bath after it.

[2] Narrated by Al-Bukhârî and Muslim.

consider it unless it is mandatory to know that the Prophet (PBUH) said,

> *"No permissible thing is more detested by Allah than divorce."*[1]

The Categories of Divorce according to the Five Rulings

Divorce may be obligatory (*wâjib*), recommended (*mandûb*), allowable (*mubâh*), detestable (*makrûh*), or prohibited (*harâm*). This is what is meant by the title "The Categories of Divorce According to the Five Rulings".

1. Divorce may be obligatory, and that happens when there is a breach between two spouses and the judge sends two arbitrators to check the nature of this breach then the two arbitrators judge that they are to be separated. In this case the husband must divorce his wife. Almighty Allah says,

﴿وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَماً مِّنْ أَهْلِهِ وَحَكَماً مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلاحاً يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيماً خَبِيراً﴾

﴾*If you fear a breach between them (the man and his wife), appoint (two) arbitrators, one from his family and the other from her's; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things.*﴿

(Qur'ân: 4: 35)

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[1] Narrated by Abû Dâwûd.

2. Divorce may be recommended or desirable, and this happens when the wife neglects fulfilling the rights of Allah upon her, as when she neglects prayer for example, and the husband cannot oblige her to fulfill such rights. Also this happens when the woman is unchaste.

3. Divorce may be allowable or permissible, and this happens when it is required as a result of the woman's ill-conduct and ill-treatment.

4. Divorce may be detestable, and this happens when the divorce is done without any reason while the spouses in question are on good terms with each other. It has been narrated on the authority of `Amr Ibn Dînâr that Ibn `Umar, may Allah be pleased with him, divorced his wife so she said to him, "Have you seen anything you detest in me?" He replied in the negative so she said, "So why should you divorce a chaste Muslim woman?" The narrator said that he then revoked the divorce.[1]

Divorce which is done without reason is detestable because it makes Satan happy. It has been narrated on the authority of Jâbir, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

> *"Iblîs (Satan) places his throne upon water then sends detachments (for creating dissension among people). The nearer to him in rank are those who are most successful in creating dissension. One of them comes and says, 'I did so and so,' and he says, 'You have done nothing'. Then (another) one of*

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[1] *Sunan Sa`îd Ibn Mansûr.*

> *them comes and says, 'I did not spare so and so until I sowed the seed of discord between him and his wife.' Then he (Satan) goes near him and says, 'You have done well!'"*[1]

5. And divorce may be prohibited, and this happens when a man divorces his wife while she is menstruating or divorces her during an interval between her menstruations and he has had sexual intercourse with her during this interval. This is called "*bid`ah* divorce," and it will be clarified soon, Allah willing.

Expressions of Divorce

"Expressions of divorce" are the words or terms which a husband pronounces when aiming to divorce his wife. These expressions are either explicit or implicit or, in other words, they are either direct or indirect.

Explicit expressions of divorce are such expressions which refer to divorce directly and no other meaning is determined through them. An example of this is a man's saying to his wife, "You are divorced," or "I have divorced you," and such direct and explicit expressions. Therefore, once a man says any of those expressions to his wife, divorce takes place – i.e., is effective – whether he has intended it or not and whether he is serious or joking.

Interestingly enough, when a man says to his wife, "You are divorced," this effectuates divorce "immediately," or, in other words, divorce becomes

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[1] Narrated by Muslim.

"instantly effective" because the husband means to effectuate it immediately. Whereas, when he says to her, "You will be divorced if you visit your father's house," this divorce is effective only if she visits her father's house and divorce is "contingent" in the latter case.

Implicit expressions of divorce are the words or terms which can refer to divorce and other things at the same time. An example of this is a man's saying to his wife, "Go to your family," or "I have become separated from you". Accordingly, if a man says any of such indirect expressions to his wife, divorce takes place "only" if he has intended it, otherwise it will not be effective. It has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that

> "when the daughter of Al-Jawn was brought to the Messenger of Allah (as his bride) and he went near her, she said, 'I seek refuge with Allah from you.' He said, '*You have sought refuge with the Great; return to your family.*'"[1]

To confirm not to repeat, a man's articulating any explicit expression of divorce to his wife makes divorce effective no matter whether he has intended it or not and whether he is serious or not, because the Prophet (PBUH) said,

> "*(There are) three (things) whose seriousness is seriously (effective) and whose jesting is seriously (effective too): marriage, divorce, and revocation (of divorce).*"[2]

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Abû Dâwûd and At-Tirmidhî.

This *hadith* means that the consequence of these three things is always the same, whether they are taken seriously or with jesting.

Besides this, if those who say explicit expressions of divorce had been left without restraint to do and say whatever would suit their fancy and thus they could say that they were jesting when they said such expressions, the *shar`î* rulings would have been ineffective. This is not permissible, as whoever says that he has divorced his wife is to shoulder the responsibility of his saying and act upon the *shar`î* rulings related to such a statement, and he is not allowed to claim that he did not mean it or anything of the kind. This is all for protecting honor and the sacred tie of marriage. And, Allah knows best.

To sum up, there are four degrees for expression of divorce:

1. The husband may mean to effectuate divorce yet he does not express it with his tongue.

2. He may mean neither the expression nor the ruling connected to it (i.e., divorce).

3. He may mean the expression without the ruling connected to it.

4. He may mean both the expression and the ruling connected to it.

The first two degrees are not considered by the *Sharî`ah*, which means that they are not effective, while the last two (No. 3 and No. 4) effectuate divorce.[1]

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[1] See Ibnul-Qayyim, *Zâdul-Ma`âd*, 5/204-205.

Triple Divorce Expressed All at One Time

A man may say to his wife, "You are divorced three times," or "You are divorced. You are divorced. You are divorced". According to the preponderant view in this regard, this effectuates only one time or one pronouncement of divorce, as that was applied like this during the time of the Prophet (PBUH). It has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that

> "(the pronouncement of) three divorces during the lifetime of the Messenger of Allah (PBUH) and that of Abû Bakr and two years of the caliphate of `Umar (was treated) as one. But `Umar Ibnul-Khattâb said, 'Verily the people have begun to hasten in an issue in which they are required to observe respite. So, if we had imposed this upon them, (that might have been better for them).' And he imposed it upon them."[1]

The *Sunnah* Divorce

The *Sunnah* divorce is the permissible divorce, and it goes as follows:

- that a man divorces his wife with one pronouncement of divorce,
- after her menstruation period ends,
- after she takes the ritual bath required after it,
- and before he has intercourse with her,

[1] Narrated by Muslim and others.

- then he leaves her without making any other pronouncement of divorce until her *`iddah* (waiting period) expires.

He may revoke the divorce during her *`iddah* without her consent or the consent of her *waliyy* and no new *mahr* will be required in this case.

**He may leave her until her *`iddah* ends**, and in this case he must release her with kindness because she will have been divorced irrevocably. If he wants to marry her again after the end of her *`iddah*, it is permissible for him to do so yet the marriage is to be contracted as if he is marrying her for the first time.

He may divorce her again – i.e., for the second time – and if he revokes this second divorce then divorces her for the third time, he will not be allowed to marry her unless she marries another man properly (i.e., not through the *muhallil* marriage as clarified in the part dealing with marriage). After that, if the second husband divorces her, it is permissible for the first husband to marry her.

The aforementioned description of the permissible divorce is mentioned in the Qur'ân and the *Sunnah*, as pinpointed in the quotations mentioned above and other quotations that will be cited soon.

Almighty Allah says,

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلاثَةَ قُرُوءٍ وَلاَ يَحِلُّ لَهُنَّ أَن يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِن كُنَّ يُؤْمِنَّ بِاللَّهِ وَالْيَوْمِ الآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلاحاً وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ

دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ ۞ الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ۞ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ﴾

﴿*And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And they (women) have rights (over their husbands as regards living expenses, etc.) similar (to those of their husbands) over them (as regards obedience and respect, etc.) to what is reasonable, but men have a degree (of responsibility) over them. And Allah is All-Mighty, All-Wise. The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of (the Mahr) which you have given them, except when both parties fear that they*

would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul` (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the Ẕâlimûn (wrong-doers, etc.). And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allah. These are the limits of Allah, which He makes plain for the people who have knowledge.﴿

(Qur'ân: 2: 228-230)

The *Bid`ah* Divorce (Innovated Divorce)

The *bid`ah* divorce is a prohibited divorce because it is innovated in the religion (and this is the meaning of "*bid`ah*"). It contradicts the previous legal way of divorcing, that is, the *Sunnah* divorce. To illustrate this, a man may divorce his wife during her menstruation or divorce her during an interval between her menstruations yet after copulating with her during this interval. This divorce is prohibited and whoever does it is sinful.

Nevertheless, this divorce is counted, that is to say: in spite of its being prohibited and its perpetrator is sinful, the *bid`ah* divorce is effective and one pronouncement of divorce is counted. But how should a man act if he divorces his wife in this manner?

If a man divorces his wife during her menstruation for example, one divorce is counted; if the divorce is revocable, i.e., if it is the first or the second divorce, he is to revoke the divorce then keep her until her period of menstruation ends then another period starts then ends then he can keep her if he wants and he can divorce her if he wants yet this must be done before having intercourse with her.

This has been derived from the *ḫadîth* stating that Ibn `Umar, may Allah be pleased with him, divorced his wife when she was menstruating during the time of the Messenger of Allah (PBUH). `Umar Ibnul-Khaṯṯâb, may Allah be pleased with him, asked the Prophet (PBUH) about that and he (PBUH) said,

> *"Order him (your son) to take her back and keep her until she is pure (i.e., until her period ends and she takes the bath after it) and then to wait until she gets her next period and becomes pure again, whereupon, if he wishes to keep her, he can do so, and if he wishes to divorce her he can divorce her before having sexual intercourse with her; and that is the prescribed period which Allah has fixed for the women meant to be divorced."*[1]

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[1] Narrated by Al-Bukhârî and Muslim.

When Can a Man Divorce His Wife?

The answer to this question has more than one aspect, as this matter differs according to the status of the woman in question, as follows:

- **As for a deflowered wife who naturally has menses**, it has been mentioned earlier how her husband can divorce her according to the *Sunnah* divorce requirements: to divorce her during an interval between menstruations provided that he has not had intercourse with her during this interval; or to divorce her when she is pregnant. If he divorces her during her menstruation, he is to take her back then keep her until her period ends then the next period comes then ends, whereupon, if he wishes to divorce her he can do so yet before having intercourse with her. Significant still, the end of menstruation is not enough for divorcing such a woman after it, for the husband must wait until she takes the ritual bath required after it then he can divorce her.
- **A woman during her postnatal bleeding** is to be treated the same way a woman menstruating is. Thus, her husband cannot divorce her until her postnatal bleeding ends and before having intercourse with her. If he divorces her during the postnatal bleeding, he is to take her back the same as a menstruating woman is treated above.
- **As for a woman whose marriage has been contracted but has not been consummated**

yet, her husband can divorce her whenever he wants whether she is menstruating or not.

- **As for a woman who does not have menses because of her young age or old age,** her husband can divorce her whenever he wants as well.
- **The husband of a pregnant woman** can divorce her whenever he wants as long as her pregnancy has been confirmed. It has been narrated that Ibn `Umar, may Allah be pleased with him, divorced his wife during her menses and when `Umar, may Allah be pleased with him, mentioned that to the Prophet (PBUH), he (PBUH) said to him, *"Order him to take her back then he can divorce her when she is pure (after her menses) or when she is pregnant."*[1]

Types of Divorce

According to what has been mentioned above, divorce can be any of the following types:

1. Divorce can be **explicit** or **implicit** according to the words with which it is expressed.

2. Divorce can be **instantly effective,** as when a man intends to effectuate divorce immediately with words such as "You are divorced," and divorce can be **contingent** on something, as when a man says to his wife, "You will be divorced if you drink milk," for example. It becomes effective only if the wife drinks milk, yet some scholars – including Ibn Taymiyah –

[1] Narrated by Muslim and others.

say that if the husband did not intend divorce if she did what he conditioned divorce by (drinking milk in the example in question), the divorce is not effective, and some scholars maintain that it is regarded as a broken oath and thus an oath expiation is required. In all cases, the divorce becomes effective if he intends it.

3. Divorce can be ***Sunnah*** **divorce** or ***bid`ah*** **divorce,** as explained above in two independent sections.

4. And finally divorce can be **revocable** or **irrevocable**. It is revocable after divorcing a deflowered wife for the first or the second time. And, divorce becomes irrevocable either after divorcing a deflowered wife for the third time, and this is called "*baynûnah kubrâ*" (major irrevocability of divorce), or when a man divorces his wife after contracting his marriage to her yet before consummating this marriage, and this is called "*baynûnah sughrâ*" (minor irrevocability of divorce). In *baynûnah kubrâ* the man in question cannot remarry his divorced wife except after she marries another man, while in *baynûnah sughrâ* he can marry her with a new contract and a new *sadâq*.

Raj`ah (Revocation of Divorce)

Raj`ah* is that a man takes his divorced wife back to wedlock without a new contract. Also, *raj`ah does not require *waliyy*, *sadâq*, or the consent or knowledge of the wife, as unanimously agreed upon by scholars.

The conditions of *raj`ah*

1. The divorce in question must be revocable, that is, a husband can take his wife back only if he has divorced her once or twice.

2. This revocation of divorce must take place during her *`iddah*.

**3. The divorce must be without remuneration (*`iwad*)**, because if it is with remuneration, it will be *khul`* and not divorce.

4. The husband must have consummated the marriage, as maintained by some scholars.

A *raj`iyyah* divorcee – i.e., a woman whose divorce is revocable – is to be treated like a normal wife except with regard to the obligation of dividing the husband's stay with more than one wife. Thus, any of the two spouses can inherit the other if the latter dies, as unanimously agreed upon by scholars.

How *raj`ah* is established

Raj`ah* is established or, in other words, *raj`ah takes place **by means of words**, as when a husband says to his divorced wife, "I have taken you back," or when he says, "I have taken her back".

Raj`ah is also established **by means of action**. Thus, if the husband has intercourse with his wife, and if he touches or kisses her or does anything of the kind, he will have taken her back, simply because she is still his wife and he is still her husband. Almighty Allah says,

﴿وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلاحاً﴾

﴿*... and their husbands have the better right to take them back in that period, if they wish for reconciliation...*﴾

(Qur'ân: 2: 228)

The maintenance and lodging of a *raj`iyyah* divorcee

Almighty Allah says,

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لاَ تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلاَ يَخْرُجْنَ إِلاَّ أَن يَأْتِينَ بِفَاحِشَةٍ مُّبَيِّنَةٍ﴾

﴿*O Prophet! When you divorce women, divorce them at their `iddah (prescribed periods), and count (accurately) their `iddah (periods). And fear Allah your Lord (O Muslims), and turn them not out of their (husband's) homes, nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse...*﴾

(Qur'ân: 65: 1)

The words ﴿*... turn them not out of their (husband's) homes, nor shall they (themselves) leave...*﴾ require that the woman in question has the right to reside in her husband's house during her *`iddah*. The Prophet (PBUH) said in this regard,

"A woman has a right to maintenance and lodging if her husband can take her back (after divorce)."[1]

And Almighty Allah says,

﴿أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُم مِّن وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ﴾

﴿*Lodge them (the divorced women) where you dwell, according to your means, and do not treat them in such a harmful way that they be obliged to leave...*﴾

(Qur'ân: 65: 6)

As for the irrevocably divorced woman, she has no right to maintenance or lodging upon her husband. It has been narrated that Fâṯimah Bint Qays was divorced irrevocably and she said,

"I contended with him before the Messenger of Allah (PBUH) about lodging and maintenance allowance, but he(the Prophet) did not provide me with any lodging or maintenance allowance, and he commanded me to spend the *'iddah* in the house of Ibn Umm Maktûm."[2]

However, a woman who is divorced before consummating the marriage has the right to maintenance because Almighty Allah says as a general rule,

﴿وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ﴾

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[1] Narrated by An-Nasâ'î.
[2] Narrated by Muslim.

﴿*And for divorced women, maintenance (should be provided) on reasonable (scale). This is a duty on Al-Muttaqûn (the pious).*﴾

(Qur'ân: 2: 241)

This includes what is used in such cases of expenses and clothing. Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا فَمَتِّعُوهُنَّ وَسَرِّحُوهُنَّ سَرَاحاً جَمِيلاً﴾

﴿*O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no 'iddah (divorce prescribed period) have you to count in respect of them. So give them a present, and set them free in a handsome manner.*﴾

(Qur'ân: 33: 49)

As for the pregnant divorcee, she is to be provided with maintenance until she delivers her baby, because Almighty Allah says,

﴿وَإِن كُنَّ أُولَاتِ حَمْلٍ فَأَنفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ﴾

﴿*... And if they are pregnant, then spend on them till they deliver...*﴾

(Qur'ân: 65: 6)

Child Custody

If a woman is divorced, she is more worthy of her child's custody than his father as long as she does not

marry another man. If she marries, the father becomes more worthy of the custody than her. This is because the Prophet (PBUH) said to a woman whose husband had divorced her and they had a child, "*You are more worthy of him (the child) unless you get married.*"[1]

The `*Iddah* (Waiting Period) of a Divorcee

`*Iddah* here[2] is the divorce prescribed period during which a divorcee is not allowed to get married. The `*iddah* of a divorcee differs according to her status, as follows:

1. If a woman whose marriage has been consummated is divorced and this divorce is revocable and she is a woman who has menses, her `*iddah* is three menstrual periods, as Almighty Allah says,

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ﴾

﴿*And divorced women shall wait (as regards their marriage) for three menstrual periods...*﴾

(Qur'ân: 2: 228)

2. If she does not have menses due to her young age or old age, her `*iddah* is three months. Almighty Allah says,

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[1] Narrated by Abû Dâwûd and others.

[2] By "here" we mean to differentiate between a divorcee's `*iddah* and the `*iddah* of a widow, as the latter is to wait for four months and ten days, and if she is pregnant her `*iddah* is that she must wait until she delivers her baby.

﴿وَاللَّائِي يَئِسْنَ مِنَ الْمَحِيضِ مِن نِّسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحِضْنَ﴾

﴾*And those of your women as have passed the age of monthly courses, for them the `iddah (prescribed period), if you have doubts (about their periods), is three months, and for those who have no courses (i.e. they are still immature, their `iddah is three months likewise)...*﴿

(Qur'ân: 65: 4)

3. If a woman is divorced before consummating the marriage, no *`iddah* is required on her part. Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا﴾

﴾*O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no `iddah (divorce prescribed period) have you to count in respect of them...*﴿

(Qur'ân: 33: 49)

4. The *`iddah* of a pregnant divorce is to wait until she delivers, because Almighty Allah says,

﴿وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَن يَضَعْنَ حَمْلَهُنَّ﴾

﴾*... And for those who are pregnant (whether they are divorced or their husbands are dead), their `Iddah (prescribed period) is until they deliver (their burdens)...*﴿

(Qur'ân: 65: 4)

Khul` (the Wife's Demanding the Dissolution of Marriage)

Definition and Legality

The right of woman in demanding the dissolution of marriage is known as *khul`*, meaning, literally, putting off or taking off a thing. It is a kind of facility provided for the wife in securing divorce from her husband by returning a part or full amount of the bridal gift.

The legality of *khul`* is supported by the Qur'ân, the *Sunnah*, and *ijmâ`* (consensus of scholars). Almighty Allah says,

﴿وَلاَ يَحِلُّ لَكُمْ أَن تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلاَّ أَن يَخَافَا أَلاَّ يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلاَّ يُقِيمَا حُدُودَ اللَّهِ فَلاَ جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ﴾

﴾*... And it is not lawful for you (men) to take back (from your wives) any of your Mahr which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul`...*﴿

(Qur'ân: 2: 229)

And, it has been narrated that Ibn `Abbâs, may Allah be pleased with him, said,

> "The wife of Thâbit Ibn Qays came to the Prophet (PBUH) and said, 'O Messenger of Allah! I do not blame Thâbit for defects in his character or his religion, but I, being a Muslim, dislike to be ungrateful[1] (to him if I remain with him).' On that the Messenger of Allah (PBUH) said (to her), '*Will you give back the garden which your husband has given you (as mahr)?*' She said, 'Yes.' Then the Prophet (PBUH) said to Thâbit, '*O Thâbit! Accept your garden, and divorce her once.*'"[2]

This leads to a number of questions:

Can woman demand dissolution of marriage without legal reason?

The Prophet (PBUH) said,

> *"If a woman asks her husband for divorce without harm (inflicted upon her), she will be forbidden from the fragrance of Paradise."*[3]

Can her husband keep her aiming to harm her?

Just as a woman is not allowed to ask her husband for divorce without legal reason, he is not allowed to

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[1] Perhaps she meant what the Prophet (PBUH) meant when he said about women, as narrated by Al-Bukhârî and Muslim, "They are ungrateful to their husbands and do not show gratitude for the kindness (done to them by them). If you were to treat one of them kindly for ever and she later saw anything (displeasing) in you, she would say, 'I have never seen any good in you!'"

[2] Narrated by Al-Bukhârî.

[3] Narrated by At-Tirmidhî and others.

keep her in wedlock if she demands dissolution of marriage for a legal reason; rather, he should release her. Almighty Allah says,

﴿وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلاَ تُمْسِكُوهُنَّ ضِرَاراً لِّتَعْتَدُوا وَمَن يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلاَ تَتَّخِذُوا آيَاتِ اللَّهِ هُزُواً وَاذْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنزَلَ عَلَيْكُم مِّنَ الْكِتَابِ وَالْحِكْمَةِ يَعِظُكُم بِهِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ﴾

﴿*And when you have divorced women and they have fulfilled the term of their prescribed period, either take them back on reasonable basis or set them free on reasonable basis. But do not take them back to hurt them, and whoever does that, then he has wronged himself. And treat not the Verses (Laws) of Allah as a jest, but remember Allah's Favours on you (i.e. Islam), and that which He has sent down to you of the Book (i.e. the Qur'ân) and Al-Hikmah (the Prophet's Sunnah - legal ways - Islamic jurisprudence, etc.) whereby He instructs you. And fear Allah, and know that Allah is All-Aware of everything.*﴾

(Qur'ân: 2: 231)

Is *khul`* counted as one divorce?

The majority of scholars maintain that *khul`* is itself divorce, yet their proofs in this regard are

refuted, and according to the evident view *khul`* is *faskh* and not divorce. In marriage, *faskh*, literally meaning "nullification," signifies the nullification of marriage contract due to a legal reason.

Khul`* is *faskh* and not divorce because it has been authenticated that it is permissible to apply *khul` after two divorces and thus a third divorce is possible after it. Therefore, if *khul`* were to be divorce, the allowed number of divorces would have been four.

This is what Ibn `Abbâs, the interpreter of the Qur'ân, understood from the following verse,

﴿الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا
يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا
يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ
عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ﴾

﴿*The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your Mahr which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul`...*﴾

(Qur'ân: 2: 229)

Ibn `Abbâs said, as narrated on the authority of Ṯâwûs,

> "Giving back (the *mahr* or a part of it) is not divorcing."[1]

Another proof which confirms that *khul`* is not divorce is that the husband has the right to revoke divorce unlike *khul`* in which he has no such right unless the wife accepts it.[2]

Also, the *`iddah* of divorce is three menstrual periods or three months, as pinpointed earlier, whereas the *`iddah* required after *khul`* is only one menstrual period as will be clarified soon.

Accordingly, if a husband applies *khul`* to his wife ten times, he has the right to remarry her with a new contract before she marries another husband.[3] This means that an act of *khul`* is not counted as from the allowed number of divorces, and Allah knows best.

Important still, *khul`* is not to be counted as divorce even if the husband says that he has divorced his wife, as long as it is done "in return for remuneration paid by the wife". Still, it is not stipulated that it should be done with words expressing "*khul`*" or "*faskh*" in particular. This is what has been derived from and indicated by texts and principles of jurisprudence.[4]

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[1] Narrated by `Abdur-Razzâq.
[2] See *Zâdul-Ma`âd*, 5/199.
[3] See Ibn Taymiyah, *Fatâwâ*, 32/289.
[4] Ibid, 32/309.

The *`Iddah* of *Khul`*

After applying *khul`* the woman in question waits until she has one menstrual period then she can marry another man.

It has been narrated that Ar-Rubayyi` Bint Mu`awwidh applied *khul`* with her husband then she went to `Uthmân Ibn `Affân, may Allah be pleased with him, and asked him, "What *`iddah* should I apply?" He said, "No *`iddah* is prescribed upon you unless you are newly (married) to him, for, (if so), you are to wait until you have one menstrual period." He also said, "In this (judgment of mine) I follow the judgment of the Messenger of Allah (PBUH) concerning (the case of) Maryam Al-Mughâliyah who was a wife of Thâbit Ibn Qays Ibn Shammâs and applied *khul`* with him."[1]

[1] Narrated by An-Nasâ'î and Ibn Mâjah.

Li`ân (Oath of Condemnation)

Definition and Legality

Li`ân* literally means "invoking curse" and it can be simply identified with the phrase "oath of condemnation". It is applied in the following case: if a man accuses his wife of committing adultery and she belies him, the judge applies *li`ân between them in the manner that will be explained later. It is called "*li`ân*," which literally means "invoking curse," because the husband says, "I invoke Allah's curse upon myself if I am of those who tell lies".

The legality of *li`ân* is supported by the Qur'ân and the *Sunnah*. Almighty Allah says,

﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلاَّ أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ۞ وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِن كَانَ مِنَ الْكَاذِبِينَ ۞ وَيَدْرَأُ عَنْهَا الْعَذَابَ أَن تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ۞ وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِن كَانَ مِنَ الصَّادِقِينَ ۞ وَلَوْلَا فَضْلُ اللَّهِ عَلَيْكُمْ وَرَحْمَتُهُ وَأَنَّ اللَّهَ تَوَّابٌ حَكِيمٌ﴾

﴿*And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. And the*

fifth (testimony) (should be) the invoking of the Curse of Allah on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a lie. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks the truth. And had it not been for the Grace of Allah and His Mercy on you (He would have hastened the punishment upon you)! And that Allah is the One Who accepts repentance, the All-Wise.

(Qur'ân: 24: 6-10)

It has been narrated that Ibn `Abbâs, may Allah be pleased with him, said,

> "Hilâl Ibn Umayyah accused his wife of committing illegal sexual intercourse with Sharîk Ibn Sahmâ' and filed the case before the Prophet (PBUH). The Prophet (PBUH) said (to Hilâl), '*Either you bring forth the (required) proof (four witnesses) or you will receive the legal punishment (lashes) on your back.*' Hilâl said, 'O Messenger of Allah! If any one of us saw a man over his wife, would he go to seek after the (required) proof?' The Prophet (PBUH) kept on saying, '*Either you bring forth the (required) proof or you will receive the legal punishment (lashes) on your back.*' Hilâl then said, 'By Him Who has sent you with the truth, I am telling the truth and Allah will reveal to

you what will save my back from the punishment.' Then Jibrîl (Gabriel) came down and revealed to him ((PBUH), ﴾*And for those who accuse their wives...*﴿ (Qur'ân: 24: 6) The Prophet (PBUH) recited (the verses on *li'ân*) until he reached, ﴾*... if he (her husband) speaks the truth.*﴿ (Qur'ân: 24: 9) Then the Prophet (PBUH) left and sent for the woman, and Hilâl went (and brought) her and then took the oaths (confirming the claim). The Prophet was saying, '*Allah knows that one of you is a liar, so will any of you repent?*' Then the woman got up and took the oaths and when she was about to take the fifth one, the people stopped her and said, 'It (the fifth oath) will definitely bring (Allah's curse on you if you are guilty).' So she hesitated and recoiled (from taking the oath) so much that we thought that she would withdraw her denial. But then she said, 'I will not dishonor my family all through these days,' and she carried on (the process of taking oaths). The Prophet (PBUH) then said, '*Watch her; if she delivers a black-eyed child with big hips and fat shins then he (the child) belongs to Sharîk Ibn Sahmâ'.*' Later she delivered a child of that description. So the Prophet (PBUH) said, '*If the case was not settled by Allah's Book, I would deal with her* (in a different way, i.e., he (PBUH) would punish her severely.'"[1]

[1] Narrated by Al-Bukhârî, Abû Dâwûd, At-Tirmidhî, and Ibn Mâjah.

How *Li`ân* Is to Be Applied

According to the texts available concerning *li`ân*, it is to be applied in the following manner:

- The judge starts with reminding the spouses in question of showing repentance before starting the *li`ân* process.
- If they insist on applying *li`ân*, the judge starts *li`ân* with the husband and tells him to say four times, "I testify by Allah that I speak the truth concerning the adultery of which I have accused this wife of mine".
- Then the husband testifies four times that he is one of those who speak the truth.
- Then the judge commands someone to place his hand on the husband's mouth, then he (the judge) tells him to be conscious of Allah, for the fifth testimony will definitely bring Allah's curse upon him if he is telling a lie about his wife. This is so that the husband may not bear the fifth testimony if he is a liar, because worldly punishment is much lighter than that of the Hereafter.
- If the husband insists, he is to say, "I invoke Allah's curse upon myself if I am of those who tell lies". Once he says that, he is saved from the legal punishment prescribed for *qadhf* (slanderous accusation).[1] If he withdraws his accusation, he is to be lashed eighty lashes.

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[1] The legal punishment which is to be inflicted to the person who commits *qadhf* is that he is to be lashed eighty lashes. For more =

- After that the judge tells the wife that she either applies her part of the *li`ân* or the legal punishment of adultery (stoning to death) will be applied to her.
- To apply her part of the *li`ân*, the wife testifies four times that he is telling a lie.
- Then the judge commands someone to admonish her and tell her that the fifth testimony will definitely bring Allah's curse upon her if she is guilty, so that she may withdraw before bearing this testimony if she is guilty.
- After that she either withdraws her belying her husband and confesses her guilt, and in this case the legal punishment for adultery – stoning to death – will be applied to her; or she continues the process of *li`ân* and says, "I will incur Allah's wrath if he speaks the truth". In the latter case she is saved from the punishment of *zinâ*.

The Consequences of *Li`ân*

When *li`ân* is applied between a husband and his wife in the manner pinpointed above, the following consequences result:

1. The two spouses are to be separated, because it has been narrated by Ibn `Umar, may Allah be pleased with him, that "the Prophet (PBUH)

=details about *qadhf* review it in the section dealing with "Legal Punishments" in this book.

applied *li`ân* between a man and a woman from the Ansâr and judged that they were to be separated."[1]

2. The wife becomes prohibited for the man forever, because it has been mentioned in the *hadîth* narrated on the authority of Sahl Ibn Sa`d that "it was customary that (spouses) who applied *li`ân* were to be separated (by divorce) then they were not to reunite forever."[2] This is according to the view adopted by the majority of scholars.

3. The woman deserves her *sadâq*, and so the husband is not to take anything from it. This is because the Prophet (PBUH) said to the two spouses who applied *li`ân*, "*Your reckoning will be with Allah. One of you is telling a lie, and you (meaning the husband) have no way to her.*" The man said, "What about my money?" meaning the *mahr* that he had given to his wife. He (PBUH) said, "*You have no right to restore any money, for if you have spoken the truth (as regards the accusation), you have also consummated your marriage with her; and if you have told a lie, you are less rightful to have your money back.*"[3]

4. The child is ascribed to the mother. It has been narrated on the authority of Ibn `Amr, may Allah be pleased with him, that

> "the Prophet (PBUH) applied *li`ân* between a man and his woman and he (the man) denied her son (i.e., negated the child's being a son of his), so he (the Prophet) separated

[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Abû Dâwûd and Al-Bayhaqî.
[3] Narrated by Al-Bukhârî and Muslim.

them (by divorce) and judged that the son was to be ascribed to the woman."[1]

5. The woman and her son inherit each other, for Ibn Shihâb said in the narration of Sahl Ibn Sa`d,

> "She was pregnant and her son was ascribed to her, and it became customary that such (a son) would inherit his mother and she would inherit him in the share prescribed by Allah for her."[2]

[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Al-Bukhârî, Muslim, and Abû Dâwûd.

Zihâr (Regarding One's Wife as the Back of One's Mother)

Zihâr is that a man says to his wife, "You are like my mother's back," meaning "You are prohibited to me".

Almighty Allah says,

﴿الَّذِينَ يُظَاهِرُونَ مِنكُم مِّن نِّسَائِهِم مَّا هُنَّ أُمَّهَاتِهِمْ إِنْ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنكَرًا مِّنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوٌّ غَفُورٌ﴾

﴿*Those among you who make their wives unlawful (Az-Zihâr) to them by saying to them 'You are like my mother's back.' They cannot be their mothers. None can be their mothers except those who gave them birth. And verily, they utter an ill word and a lie. And verily, Allah is Oft-Pardoning, Oft-Forgiving.*﴾

(Qur'ân: 58: 2)

This *zihâr* is prohibited as unanimously agreed upon by scholars and whoever does it is sinful. This is because Almighty Allah says about it in the verse quoted above, ﴿*... and verily, they utter an ill word and a lie...*﴾

The Consequences of *Zihâr*

If a man says to his wife, "You are like my mother's back," his wife becomes prohibited to him and it is not permissible for him to have intercourse with her or enjoys any part in her body except after expiating for what he has said. Almighty Allah says,

﴿وَالَّذِينَ يُظَاهِرُونَ مِن نِّسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ أَن يَتَمَاسَّا ذَٰلِكُمْ تُوعَظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ۝ فَمَن لَّمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَن يَتَمَاسَّا فَمَن لَّمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا ذَٰلِكَ لِتُؤْمِنُوا بِاللَّهِ وَرَسُولِهِ وَتِلْكَ حُدُودُ اللَّهِ وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ﴾

﴿*And those who make unlawful to them (their wives) (by Az-Zihâr) and wish to free themselves from what they uttered, (the penalty) in that case (is) the freeing of a slave before they touch each other. That is an admonition to you (so that you may not return to such an ill thing). And Allah is All-Aware of what you do. And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And for him who is unable to do so, he should feed sixty of Miskîn (poor). That is in order that you may have perfect Faith in Allah and His Messenger. These are the limits set by Allah. And for disbelievers, there is a painful torment.*﴾

(Qur'ân: 58: 3-4)

The expiation of *zihâr* is to be executed according to the "arrangement" specified by the *Sharî`ah*, and "arrangement" means that the husband in question is not allowed to switch to the next item representing this expiation except when he is not able to do the previous one, as follows:

1. First of all, he is to free a believing slave.
2. If he cannot do so, he is to observe fasting for two successive months without touching his wife.
3. And if he cannot do so, he is to feed sixty poor people.

If a man makes his wife unlawful to him through *zihâr* "for a specific period of time," it is not permissible for him to have intercourse with her during this period except after expiating for what he has done in the manner explained above. If however he fulfils his oath and completes the period without touching her, there is nothing upon him in this regard.

It has been narrated that Salmân Ibn Sakhr Al-Ansârî said that his wife would be unlawful to him like his mother's back until the month of Ramadân would pass. Yet, after only a half of Ramadân had passed he had intercourse with her at night. He went to the Messenger of Allah (PBUH) and mentioned that to him, whereupon the Prophet (PBUH) said to him, "*Set a slave free.*" He said, "I cannot find (the money required for) that." He (PBUH) said, "*Observe fast for two successive months.*" The man said, "I cannot do so." He (PBUH) said, "*Feed sixty poor*

people." The man said, "I cannot find (the food required for) that." Thereupon the Messenger of Allah (PBUH) said to `Urwah Ibn `Amr, "*Give him this `araq*[1]." Then he (PBUH) said to the man, "*Feed sixty poor people.*"[2]

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[1] *`Araq* is a huge basket having capacity for a quantity of fifteen or sixteen *ṣâ`*s and one *ṣâ`* equals three kilograms approximately.

[2] Narrated by At-Tirmidhî.

Îlâ' (Intercourse-oriented Swearing)

Îlâ' is that a husband swears that he will not have intercourse with his wife for a certain period of time.

Îlâ' Has Two Cases

1. That the period specified in the husband's oath is "less" than four months, and in this case it is better for the husband in question to have intercourse with his wife and expiate for his oath. This is because the Prophet (PBUH) said,

> *"He who takes an oath then finds something better than that, should do that which is better, and let him expiate for his oath."*[1]

If the husband does not expiate for his oath and continues acting upon his *îlâ'*, the wife must remain until the specified period of *îlâ'* is over and she has no right to demand divorce. It has been narrated that Anas Ibn Mâlik, may Allah be pleased with him, said,

> "The Messenger of Allah (PBUH) took an oath that he would abstain from his wives, and at that time his leg had been sprained (dislocated). So he stayed in the Mashrubah (an attic room) of his for twenty nine days. Then he came down, and they (the people) said, 'O Messenger of Allah! You took an oath to abstain from your wives for one

[1] Narrated by Muslim and others.

month.' He said, *'The (Hijrî, lunar) month (in question) is of twenty nine days.'"*[1]

2. That the period is "more" than four months, and in this case he can have intercourse with his wife and expiate for his oath as well. If he does not have intercourse with her, she must remain patient until the period is over, then she can ask him to either have intercourse with her or divorce her. Almighty Allah says,

﴿لِّلَّذِينَ يُؤْلُونَ مِن نِّسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِن فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ ۝ وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ﴾

﴾*Those who take an oath not to have sexual relation with their wives must wait four months, then if they return (change their idea in this period), verily, Allah is Oft-Forgiving, Most Merciful. And if they decide upon divorce, then Allah is All-Hearer, All-Knower.*﴿

(Qur'ân: 2: 226-227)

When the specified period is over the husband is to be made to choose either to have intercourse with her or to divorce her. This is according to the view of the majority of scholars.[2]

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[1] Narrated by Al-Bukhârî and others.
[2] See *Fathul-Bârî*, 9/428.

Questions and Answers on Separation between Spouses

Q: What is the *shar`î* ruling concerning a man who says to his wife, "You are prohibited to me."?

A: According to the most evident view in this connection, this is not a form of divorce. Rather, it is to be treated like a broken oath for which the person in question is to expiate (as clarified in the section dealing with "oaths"). This is because Almighty Allah says,

﴿يَـا أَيُّهَـا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ تَبْتَغِي مَرْضَاتَ أَزْوَاجِـكَ وَاللَّـهُ غَفُورٌ رَّحِيمٌ ۞ قَدْ فَرَضَ اللَّهُ لَكُمْ تَحِلَّةَ أَيْمَانِكُمْ﴾

﴿*O Prophet! Why do you ban (for yourself) that which Allah has made lawful to you, seeking to please your wives? And Allah is Oft-Forgiving, Most Merciful. Allah has already ordained for you (O men), the dissolution of your oaths...*﴾

(Qur'ân: 66: 1-2)

And, Allah knows best.

Q: What is the *shar`î* ruling concerning a man who says to his wife, "You are like my sister to me."?

A: This is neither divorce nor *zihâr*, because it has

been narrated that a tyrant sent to Prophet Ibrâhîm (Abraham), peace be upon him, and asked him, "Who is (this lady) accompanying you?" meaning his wife. Thereupon Prophet Ibrâhîm said that she was his sister, to the end of the *hadîth*.[1] And, Allah knows best.

Q: What is the *shar`î* ruling concerning a man who divorces his wife in himself without expressing this with words?

A: If a man divorces his wife in himself, i.e., without expressing this with words, this divorce is not effective according to the majority of scholars, because it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Allah forgives my followers those (deeds) their souls may whisper or suggest to them as long as they do not act (on that) or speak (expressing it)."*[2]

And, Allah knows best.

Q: What is the *shar`î* ruling concerning a man who says about a certain woman before marrying her actually, "If I marry so and so, I will divorce her."?

A: Such a statement is not legally considered and does not have any effect as long as divorce is concerned. This is because the Prophet (PBUH) said,

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[1] Narrated by Al-Bukhârî and Muslim.

[2] Narrated by Al-Bukhârî and Muslim.

"... and he has no (right to) divorce in that which he does not have (any right to do so)."[1]

This means that a man has no right to divorce a woman upon whom he does not have such a right. And, Allah knows best.

Q: What is the *shar'î* ruling if a man gives his wife the right to divorce herself?

A: Most scholars say that the divorce will be effective if she divorces herself from him, while some others assert that it will not be effective because divorce is for men and not for women. And, Allah knows best.

Q: If a man divorced his wife then she married another man then the second man divorced her then the first husband married her again, would the first divorce be counted from the three acts of divorces after which divorce becomes irrevocable?

A: This question comes in two possible cases:

- The first husband may have divorced her three times, and thus the divorce became irrevocable, then she married another man who divorced her later, then she remarried the first husband. In this case the first husband has a new right – according to this new marriage – to three times of divorce, as unanimously agreed upon by scholars.

[1] Narrated by At-Tirmidhî and others.

- The first husband may have divorced her one time or two then she married another one who divorced her then she married the first husband again. Some scholars say that the first husband has the right to divorce her only the number of divorce allowances remaining from the first marriage, i.e., two if he divorced her once in the first marriage and one if he divorced her twice. This is the view of `Umar Ibnul-Khattâb, may Allah be pleased with him, and it has been adopted by Ash-Shâfi`î as well. On the other hand, some other scholars are of the opinion that the second marriage to the first husband demolishes the first divorce or divorces and consequently the first husband has the right to divorce her up to three times irrespective of how many times he divorced her before. This view has been attributed to Ibn `Abbâs, Ibn `Umar, Abû Hanîfah, and others. The second view may be more evident than the first one as it befits the spirit of the *Sharî`ah*, especially it is not logical that a man who divorces his wife three times – then remarries her after she marries another one and the latter divorces her – has the right to divorce her three times while a man who divorces his wife with a "lesser" number of divorces – then remarries her after she marries another one and the latter divorces her – has the right to divorce her also with a "lesser" number of divorces. And, Allah knows best.

Q: What is the *shar`î* ruling if a man accuses his wife of committing adultery yet they do not submit the case to a judge?

A: Answering this question, Ibrâhîm An-Nakh`î says, "She remains his wife,"[1] meaning that the case does not have the same consequences of *li`ân* when a man accuses his wife of committing adultery then they apply *li`ân* when she belies him. And, Allah knows best.

Q: What is the *shar`î* ruling if a man says to his wife "I have not found you a virgin."?

A: If he means that she committed *zinâ* and so she lost her virginity because of that, no legal punishment is to be inflicted because of that and *li`ân* is not to be applied either, because a woman may lose her virginity because of other causes than intercourse. If however he means to directly accuse her of *zinâ*, then *li`ân* is to be applied if she belies him. And, Allah knows best.

Q: What is the *shar`î* ruling concerning a woman whose husband has been lost?

A: If a husband travels or goes out of his house for any other reason then is lost, his wife is to wait for four years then applies a *`iddah* of a widow, i.e., four months and ten days, and after that she can legally marry another man. This judgment has been authentically attributed to `Umar Ibnul-Khattâb, `Uthmân Ibn `Affân, and Ibn `Umar, may Allah be pleased with them.[2]

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[1] Recorded by `Abdur-Razzâq in his *Musannaf* (12411).
[2] See *Jâmi`u Ahkâmin-Nisâ'*, 4/199.

However some scholars maintain that there is no legal reason for her so that she can wait for such a period of time as long as her absent husband has left for her what suffices her for living. Yet still, these scholars say that if she fears of seduction and temptation, she can ask a judge for nullifying her marriage.[1] And, Allah knows best.

[1] See *Al-Jâmi'*, 4/202.

Part Three
Oaths and Vows

Oaths

Definition

In *shar`î* terminology, *yamîn* or oath is to confirm a certain matter by means of swearing by the name of Allah or any of His Attributes.

Divisions of Oath

There are three divisions of oath: *al-yamîn al-laghw* (unintentional oath), *al-yamîn al-ghamûs* (heinous oath), and *al-yamîn al-mun`aqidah* (deliberate oath). Below is a clarification of each section.

1. *Al-Yamîn Al-Laghw* (Unintentional Oath)

This is an oath that a man takes without actually intending to swear, whether it is taken for confirming something or negating it, as when a man says, "No, by Allah," or "By Allah, you will eat with me".

This oath is not to be fulfilled and the person who takes it is not legally blamed, because Almighty Allah says,

﴿لاَ يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِن يُؤَاخِذُكُم بِمَا كَسَبَتْ قُلُوبُكُمْ وَاللَّهُ غَفُورٌ حَلِيمٌ﴾

﴾*Allah will not call you to account for that which is unintentional in your oaths, but He*

will call you to account for that which your hearts have earned. And Allah is Oft-Forgiving, Most-Forbearing.﴿

(Qur'ân: 2: 225)

`Â'ishah, may Allah be pleased with her, said,

"(The verse) ﴾*Allah will not call you to account for that which is unintentional in your oaths...*﴿ was revealed concerning such sayings as 'No, by Allah' and 'Yes, by Allah'."[1]

2. *Al-Yamîn Al-Ghamûs* (Heinous Oath)

This kind of oath is a major sin and it is that a man swears when telling a lie to deprive someone of his due right; it is the false oath.

It has been narrated on the authority of Anas, may Allah be pleased with him, that the Prophet (PBUH) was asked about the great sins and he said,

"They are: To join others in worship with Allah, to be undutiful to one's parents, to kill a person (whom Allah has forbidden to kill), and to testify falsely."[2]

The Prophet (PBUH) also said,

"He who swears falsely to take the property of a Muslim unlawfully, will meet Allah on the Day of Resurrection when He will be angry with him."

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[1] Narrated by Al-Bukhârî.

[2] Narrated by Al-Bukhârî and others.

There is no expiation for this oath, because it is too heinous to be expiated, yet whoever takes such an oath must repent to Allah sincerely and give anything he might have taken unlawfully back to those from whom he has taken it.

3. *Al-Yamîn Al-Mun`aqidah* (Deliberate Oath)

This oath is established when a person takes an oath concerning a certain thing that he will do in the future with the intention of swearing as well as of doing the thing in question.

This oath must be fulfilled, that is, by doing the thing specified in the oath, otherwise it will be a broken oath and this requires an expiation (as will soon be explained). Still, the Muslim must remember here the Prophet's words,

> *"He who takes an oath then finds something better than that, should do that which is better, and let him expiate for his oath."*[1]

And of course, Allah would never accept that a man who swears that he will do something evil should fulfill his oath.

Oath Expiation

A person who has broken his oath and is legally asked to expiate for that can do so by doing "any" of the following:

1. To feed ten poor people on a scale of the average of that with which he feeds his own family.

[1] Narrated by Muslim and others.

2. To clothe ten poor people.

3. To set a slave free.

If a person cannot do any of these three things, he is "to observe fast for three days".

To confirm not to repeat, you have no right to expiate a broken oath with the fasting of three days except after failing to use any of the first three choices: feeding ten poor people, or clothing them, or freeing a slave. Almighty Allah says,

﴿لاَ يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِن يُؤَاخِذُكُم بِمَا عَقَّدتُّمُ الأَيْمَانَ فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ فَمَن لَّمْ يَجِدْ فَصِيَامُ ثَلاَثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ﴾

﴾*Allah will not punish you for what is unintentional in your oaths, but He will punish you for your deliberate oaths; for its expiation (a deliberate oath) feed ten Masâkîn (poor persons), on a scale of the average of that with which you feed your own families; or clothe them; or manumit a slave. But whosoever cannot afford (that), then he should fast for three days. That is the expiation for the oaths when you have sworn. And protect your oaths (i.e. do not swear much)...*﴿

(Qur'ân: 5: 89)

The conditions obligating expiation

You should know that this expiation of broken oaths becomes obligatory when the following conditions are met:

1. If the person who takes the oath is *mukallaf* (legally responsible).

2. If he does this willingly.

3. If he intends to fulfill the oath (i.e., if the oath is deliberate).

4. If the oath is concerning something that is intended to be done or not be done in the future.

5. If the man breaks his oath by doing what he has sworn to not do or not doing what he has sworn to do.

Rulings Related to Oaths

1. An oath is to be fulfilled only when it is taken by Allah or any of His Attributes or Names.

It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Messenger of Allah (PBUH) found `Umar Ibnul-Khattâb, may Allah be pleased with him, in a group of people and he was swearing by his father. So the Messenger of Allah (PBUH) said,

> *"Verily! Allah forbids you to swear by your fathers. If a person has to take an oath, let him swear by Allah or otherwise he is to keep quiet."*[1]

[1] Narrated by Al-Bukhârî and Muslim.

2. Swearing by other than Allah is an act of polytheism.

It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Whoever swears by other than Allah will have committed (an act of) disbelief or (an act of) polytheism."*[1]

Accordingly, it is not permissible to swear by the Prophet, or by the Ka`bah, or by one's sons, or one's father, etc.

3. If you swear by other than Allah as a slip of the tongue, you can say "There is no god but Allah," because it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him that the Messenger of Allah (PBUH) said,

> *"He who takes an oath in the course of which he says, 'By Al-Lât (and Al-`Uzzâ),' he should say, 'There is no god but Allah'."*[2]

4. Whoever swears falsely and deliberately by a religion other than Islam, will be as he says. It has been narrated on the authority of Thâbit Ibnud-Dahhâk that the Messenger of Allah (PBUH) said,

> *"Whoever swears by a religion other than Islam when he is telling a lie, he is really so if his oath is false..."*[3]

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Al-Bukhârî and Muslim.
[3] Narrated by Al-Bukhârî and Muslim.

In other words, a person may swear by saying that he is a non-Muslim, e.g., a Jew or a Christian, etc., and says for example, "I am a Jew if I do not visit such and such a person". In this case he will be a Jew if he does not visit that person, as long as he means what he says.

5. If a person swears by Allah, you should accept that, for it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"`Îsâ (Jesus), seeing a man stealing, asked him, 'Did you steal?' He said, 'No, by Allah, except Whom there is no god.' `Îsâ said, 'I believe in Allah and doubt my eyes.'"*[1]

6. If you say that a certain lawful kind of food is prohibited for you or anything of the kind, it is not turned unlawful to you because of that but you are to expiate for it just as for a broken oath. Almighty Allah says,

> ﴿يَـا أَيُّهَـا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ تَبْتَغِي مَرْضَاتَ أَزْوَاجِـكَ وَاللَّـهُ غَفُورٌ رَّحِيمٌ ۞ قَدْ فَرَضَ اللَّهُ لَكُمْ تَحِلَّةَ أَيْمَانِكُمْ﴾

> ﴾*O Prophet! Why do you ban (for yourself) that which Allah has made lawful to you, seeking to please your wives? And Allah is Oft-Forgiving, Most Merciful. Allah has already ordained for you (O men), the dissolution of your oaths...*﴿

(Qur'ân: 66: 1-2)

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[1] Narrated by Al-Bukhârî and Muslim.

7. If you choose to feed ten poor people to expiate a broken oath, you must feed them and it is not permissible that you pay the fiscal value of the food required for that. This is according to the view adopted by the majority of scholars, unlike the opinion of Abû Hanîfah who maintains that it is permissible to do so.

8. If you take an oath concerning something then forget it, no breaking of oath is counted against you. In other words, if you swore that you "would not do" a certain thing then you forgot that and "did" that thing forgetfully or by mistake, your oath is not regarded as a broken one, because Almighty Allah says,

﴿رَبَّنَا لاَ تُؤَاخِذْنَا إِن نَّسِينَا أَوْ أَخْطَأْنَا﴾

﴿*... Our Lord! Punish us not if we forget or fall into error...*﴾

(Qur'ân: 2: 286)

And according to a *hadîth* narrated by Muslim in this regard Allah said "Yes," (as responding positively to this invocation).

9. Do not let swearing prevent you from doing good, so if you take an oath concerning something then observe that there is something better than it, then do what is better and expiate for your broken oath. Almighty Allah says,

﴿وَلاَ تَجْعَلُوا اللَّهَ عُرْضَةً لأَيْمَانِكُمْ أَن تَبَرُّوا وَتَتَّقُوا وَتُصْلِحُوا بَيْنَ النَّاسِ وَاللَّهُ سَمِيعٌ عَلِيمٌ﴾

﴾*And make not Allah's (Name) an excuse in your oaths against your doing good and acting piously, and making peace among mankind. And Allah is All-Hearer, All-Knower*[1].﴿

(Qur'ân: 2: 224)

And, the Prophet (PBUH) said,

> *"He who takes an oath then finds something better than that, should do that which is better, and let him expiate for his oath."*[2]

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[1] i.e., do not swear much and if you have sworn against doing something good, you are to give an expiation for the oath and do what is good.

[2] Narrated by Muslim and others.

Vows

Definition and Legality

Nadhr or vowing is that a person binds himself to do a certain thing, which is not obligatory upon him, for the sake of Allah with words that express that, such as saying, "I commit myself to do such and such a thing for Allah".

The legality of vowing is supported by the Qur'ân and the *Sunnah*. Almighty Allah says,

﴿وَمَا أَنفَقْتُم مِّن نَّفَقَةٍ أَوْ نَذَرْتُم مِّن نَّذْرٍ فَإِنَّ اللَّهَ يَعْلَمُهُ﴾

﴿*And whatever you spend for spendings (e.g., in Sadaqah - charity, etc. for Allah's Cause) or whatever vow you make, be sure Allah knows it all...*﴾

(Qur'ân: 2: 270)

He also says,

﴿يُوفُونَ بِالنَّذْرِ وَيَخَافُونَ يَوْمًا كَانَ شَرُّهُ مُسْتَطِيرًا﴾

﴿*They (are those who) fulfill (their) vows, and they fear a Day whose evil will be wide-spreading.*﴾

(Qur'ân: 76: 7)

And, it has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that the Prophet (PBUH) said,

> *"Whoever vows that he will be obedient to Allah, must remain obedient to Him; and whoever makes a vow that he will disobey Allah, must not disobey Him."*[1]

Kinds of Vow

Vow is of two kinds:

1. **Absolute or unrestricted vow**, and it is that a man commits himself to do a certain act without conditioning it by a certain thing. For instance, a man may say, "I commit myself to offer two *rak`ahs* for the sake of Allah."

2. **Contingent vow**, and it is that a man commits himself to do a certain act and makes it contingent on the happening of some blessing or the removal of some calamity. For example, he may say, "If Allah cures my patient, I commit myself that I will feed a poor person." Such contingent vow is detestable in principle, as the Prophet (PBUH) said,

> *"A vow neither hastens nor delays anything, but by the making of vows, some of the wealth of a miser is taken out."*[2]

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[1] Narrated by Al-Bukhârî and others.
[2] Narrated by Al-Bukhârî and Muslim.

Rulings Related to Vows

1. Whoever vows that he will obey Allah, must fulfill it. The Prophet (PBUH) said,

> *"Whoever vows that he will be obedient to Allah, must remain obedient to Him..."*[1]

But if a person fails to fulfill such a vow, he is to do an oath expiation, because the Prophet (PBUH) said,

> *"The expiation of an (unfulfilled) vow is that of a (broken) oath."*[2]

2. Whoever vows that he will disobey Allah, must not fulfill it, as the Prophet (PBUH) said,

> *"... and whoever makes a vow that he will disobey Allah, must not disobey Him."*[3]

He also said,

> *"No vow is to be made concerning an act of disobedience, and the expiation required for such (a vow) is that of a (broken) oath."*[4]

3. Whoever vows to do a thing that Allah has not prescribed or a legal thing that he cannot do, should leave it, yet he is to do an oath expiation. It

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[1] Narrated by Al-Bukhârî and others.
[2] Al-Bukhârî Muslim and An-Nasâ'î.
[3] Narrated by Al-Bukhârî and others.
[4] Narrated by Abû Dâwûd and others.

has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that

> "while the Prophet (PBUH) was delivering a sermon, he saw a man standing, so he asked about that man. They (the people) said, 'It is Abû Isrâ'îl who has vowed that he will stand and never sit down, that he will never come in the shade nor speak to anybody, and that he will fast.' The Prophet said, '*Order him to speak, let him come in the shade, and make him sit down, but let him complete his fast.*'"[1]

4. Whoever makes a vow and does not specify it, should do an oath expiation. For example, a man may say, "I make a vow that I will do something for Allah," without defining this thing. The Prophet (PBUH) said,

> "*The expiation of a vow which has not been named (i.e., specified) is that of an oath.*"[2]

5. If a person makes a vow then dies, his *waliyy* – who is normally one of his sons or his heirs in general – is to fulfill that vow. It has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that

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[1] Narrated by Al-Bukhârî and others.
[2] Narrated by Abû Dâwûd and others.

“Sa`d Ibn `Ubâdah asked the Messenger of Allah (PBUH) concerning a vow that his mother made then died before fulfilling it. The Messenger of Allah (PBUH) said, '*Fulfill it on her behalf.*'”[1]

[1] Narrated by Al-Bukhârî and Muslim.

Questions and Answers on Oaths and Vows

Q: Is the oath taken by a person based on his intention?

A: Any oath which a person takes is considered on the basis of his intention as regards its being effective or not. Thus, if a person takes an oath concerning doing something while intending to do some other thing, his intention is the criterion here. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"An oath is to be interpreted according to the intention of the one who takes it."*[1]

And, Allah knows best.

Q: What is the *shar`î* ruling concerning a person who says *"Inshâ'allâh* (Allah willing)" after swearing that he will do a certain thing?

A: In this case his oath will not be considered a broken one if he does not do the thing in question. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said that once (Prophet) Sulaymân (Solomon),

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[1] Narrated by Muslim.

son of (Dâwûd) David said, "(By Allah) Tonight I will have sexual intercourse with one hundred (or ninety-nine) women each of whom will give birth to a knight who will fight in Allah's cause." And he did not say, "Allah willing." Therefore only one of those women conceived and gave birth to a half-man. The Prophet (PBUH) added, "*By Him in Whose Hands Muhammad's soul is, if he had said, 'Allah willing,' (he would have begotten sons) all of whom would have been knights striving in Allah's cause.*"[1] And, Allah knows best.

Q: When does a vow become valid and when does it become invalid?

A: A vow becomes valid if it is made for doing something that would bring one near to Almighty Allah, and in this case it must be fulfilled. On the other hand, a vow becomes invalid if it is made for doing something evil, so such a vow is not to be fulfilled yet an oath expiation is to be made. And, Allah knows best.

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[1] Narrated by Al-Bukhârî and others.

Part Four

Food, Drink, Vessels, Clothing, and Adornment

Food

What is meant here by food is what man eats for the purposes of nourishment and nutrition.

Originally, all kinds of food are lawful except for the kinds which have been prohibited by a legal text. Almighty Allah says,

﴿يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الأَرْضِ حَلاَلاً طَيِّباً﴾

﴿*O mankind! Eat of that which is lawful and good on the earth...*﴾

(Qur'ân: 2: 168)

﴿قُــلْ لاَّ أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّماً عَلَى طَاعِمٍ يَطْعَمُهُ إِلاَّ أَن يَكُــونَ مَيْــتَةً أَوْ دَمــاً مَّسْفُوحاً أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقاً أُهِلَّ لِغَيْرِ اللَّهِ بِهِ﴾

﴿*Say (O Muhammad): 'I find not in that which has been inspired to me anything forbidden to be eaten by one who wishes to eat it, unless it be Maytah (a dead animal) or blood poured forth (by slaughtering or the like), or the flesh of swine (pork, etc.) for that surely is impure, or impious (unlawful) meat (of an animal) which is slaughtered as a sacrifice for others than Allah...'*﴾

(Qur'ân: 6: 145)

﴿وَمَا لَكُمْ أَلاَّ تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُم مَّا حَرَّمَ عَلَيْكُمْ إِلاَّ مَا اضْطُرِرْتُمْ إِلَيْهِ﴾

﴿*And why should you not eat of that (meat) on which Allah's Name has been pronounced (at the time of slaughtering the animal), while He has explained to you in detail what is forbidden to you, except under compulsion of necessity?...*﴾

(Qur'ân: 6: 119)

As a general rule, food which is either allowed through a text or not described as forbidden, is lawful in either case. This means that a kind of food is to be described as forbidden only when it is described as such by a text.

Prohibited Food

1. *Maytah* (dead animals) of all kinds

This includes the following:

a. Every animal that dies without killing or slaughtering and this is generally called "*maytah*".

b. Every animal that has been killed by strangling, and this is called "*munkhaniqah*".

c. Every animal that has been killed by a violent blow, and this is called "*mawqûdhah*".

d. Every animal that has been killed by a headlong fall, and this is called "*mutaraddiyah*".

e. Every animal that has been killed by the goring of horns, and this called "*natîhah*".

f. Every animal that has been killed or (partly) eaten by a wild animal. However, if a wild beast wounds an animal and this animal is slaughtered before it dies, it becomes lawful.

Almighty Allah says concerning this,

﴿حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ وَالْمُنْخَنِقَةُ وَالْمَوْقُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلاَّ مَا ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى النُّصُبِ وَأَن تَسْتَقْسِمُوا بِالأَزْلاَمِ ذَلِكُمْ فِسْقٌ﴾

﴿*Forbidden to you (for food) are: Al-Maytah (the dead animals - cattle-beast not slaughtered), blood, the flesh of swine, and the meat of that which has been slaughtered as a sacrifice for others than Allah, and that which has been killed by strangling, or by a violent blow, or by a headlong fall, or by the goring of horns - and that which has been (partly) eaten by a wild animal - unless you are able to slaughter it (before its death) - and that which is sacrificed (slaughtered) on An-Nusub (stone altars). (Forbidden) also is to use arrows seeking luck or decision, (all) that is Fisq (disobedience of Allah and sin)...*﴾

(Qur'ân: 5: 3)

Two things are exempted from *maytah*: fish and locusts

The Prophet (PBUH) said,

"Two (kinds) of maytah and two (kinds) of blood have been made lawful for us. The two (kinds) of maytah are the whale (i.e., fish) and locusts, and the two (kinds) of blood are the liver and the spleen."[1]

2. The blood poured forth (by slaughtering and the like)

Almighty Allah says concerning this blood and other kinds of such prohibited things that will be listed soon,

﴿قُل لاَّ أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّماً عَلَى طَاعِمٍ يَطْعَمُهُ إِلاَّ أَن يَكُونَ مَيْتَةً أَوْ دَماً مَّسْفُوحاً أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقاً أُهِلَّ لِغَيْرِ اللَّهِ بِهِ﴾

﴾*Say (O Muhammad): 'I find not in that which has been inspired to me anything forbidden to be eaten by one who wishes to eat it, unless it be Maytah (a dead animal) or blood poured forth (by slaughtering or the like), or the flesh of swine (pork, etc.) for that surely is impure, or impious (unlawful) meat (of an animal) which is slaughtered as a sacrifice for others than Allah...'*﴿

(Qur'ân: 6: 145)

Still, blood that remains in animals' blood vessels and cannot be avoided is exempted from this prohibition.

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[1] Narrated by Ibn Mâjah and others.

Two things are exempted from the prohibited blood: the liver and the spleen. They are lawful because the Prophet (PBUH) said in the aforementioned *hadîth*, "... *and the two (lawful kinds) of blood are the liver and the spleen.*"[1]

3. The flesh of swine

This flesh is prohibited as cited in the abovementioned verse (Qur'ân: 6: 145). Besides, all Muslim scholars agree to the effect that the flesh of swine is prohibited.

4. That on which Allah's name has not been mentioned

Almighty Allah says,

﴿وَلَا تَأْكُلُوا۟ مِمَّا لَمْ يُذْكَرِ ٱسْمُ ٱللَّهِ عَلَيْهِ﴾

﴿*Eat not (O believers) of that (meat) on which Allah's Name has not been pronounced (at the time of the slaughtering of the animal)...*﴾

(Qur'ân: 6: 121)

This means that it is not permissible for a Muslim to eat from the meat of an animal that has been slaughtered by a disbeliever or a Magian, yet he is allowed to eat from an animal slaughtered by a Christian or a Jew as long as he knows that the name of other than Allah has not been mentioned on it while slaughtering. Almighty Allah says,

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[1] Narrated by Ibn Mâjah and others.

﴿وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَّكُمْ وَطَعَامُكُمْ حِلٌّ لَّهُمْ﴾

﴿... *The food (slaughtered cattle, eatable animals, etc.) of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them...*﴾

(Qur'ân: 5: 5)

5. The flesh of domestic donkeys

It has been narrated that Anas, may Allah be pleased with him, said,

> "We reached Khaybar early in the morning and the inhabitants of Khaybar came out carrying their spades, and when they saw the Prophet (PBUH) they said, 'Muhammad! By Allah! Muhammad and his army!' The Prophet (PBUH) said, '*Allâhu akbar (Allah is the Greatest)! Khaybar is destroyed, for whenever we approach a (hostile) nation (to fight) then it will be a hapless morn.*'[1] We then procured some donkey meat (and intended to eat it), but an announcement was made by the announcer of the Prophet, 'Allah and His Messenger forbid you to eat the meat of donkeys as it is an impure thing.'"[2]

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[1] Perhaps the Prophet (PBUH) meant by these words what is referred to in the following Qur'ânic words, ﴿*Would they hasten on Our doom? But when it comes home to them, then it will be a hapless morn.*﴾ (Qur'ân: 37: 176-177) And, Allah knows best.

[2] Narrated by Al-Bukhârî and Muslim.

6. The flesh of wild animals and birds of prey

It has been narrated that Ibn `Abbâs, may Allah be pleased with him, said,

> "The Messenger of Allah (PBUH) forbade (the eating of) all fanged beasts of prey, and all the birds which have talons."[1]

The flesh and milk of *jallâlah*

Jallâlah refers to animals that are fed with impurities, and this includes camels, cows, sheep, and the like. These animals are prohibited because it has been narrated that Ibn `Umar, may Allah be pleased with him, said,

> "The Messenger of Allah (PBUH) forbade (the eating of) the flesh and milk of *jallâlah*."[2]

Still, if any of *jallâlah* animals is confined for three days and fed with pure things, its flesh and milk become permissible. This is because it has been narrated that Ibn `Umar, may Allah be pleased with him, would confine *jallâlah* for three days.[3]

Eating a Prohibited Thing When Necessary

Almighty Allah says concerning the eating of a forbidden thing by a person who is forced by necessity,

﴿فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلاَ عَادٍ فَلاَ إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ﴾

[1] Narrated by Muslim and others.
[2] Narrated by Abû Dâwûd and others.
[3] Narrated by Ibn Abû Shaybah.

﴾... *But if one is forced by necessity without willful disobedience nor transgressing due limits, then there is no sin on him. Truly, Allah is Oft-Forgiving, Most Merciful.*﴿
(Qur'ân: 2: 173)

Allah has declared that if a person is forced – by necessity without willful disobedience nor transgressing due limits – to eat any of the abovementioned prohibited things, then there is no sin on him. However, it should be known that he is to eat of that only what is enough for keeping him alive.[1]

The Legal Manner of Slaughtering

The legal manner of slaughtering refers to the way in which slaughtering is done according to the instructions of Islamic *Sharî`ah*.

Generally speaking, from all lawful things which can be slaughtered only fish and locusts can be lawfully eaten without slaughtering.

The conditions of legal slaughtering

1. The two jugular veins, the gullet, and the windpipe of the animal in question must be cut off. This is as long as the animal can be under control, but in case of hunting or when an animal breaks loose and it becomes im possible to slaughter it, in this case it is permissible to wound it in any part of its body.

It has been narrated that Râfi` Ibn Khadîj, may Allah be pleased with him, said,

[1] See *Adwâ'ul-Bayân*, 1/64-95)

"I said, 'O Messenger of Allah! We have no knife.' The Prophet (PBUH) said, *'If the killing tool causes blood to gush out, and if Allah's name is mentioned, eat (of the slaughtered animal). But do not slaughter with a nail or a tooth, for the nail is the knife of Abyssinians and a tooth is a bone.'* Suddenly a camel ran away and it was stopped (with an arrow). The Prophet (PBUH) then said, *'Of these camels there are some which are as wild as wild beasts; so if one of them runs away from you and you cannot catch it, treat it in this manner (i.e., shoot it with an arrow).'"*[1]

2. The slaughtering must be done with a sharp instrument, yet it must not be a tooth or a bone, because the Prophet (PBUH) said, as quoted above,

> *"... But do not slaughter with a nail or a tooth..."*

3. The slaughtering must be done by a Muslim or by one of the People of Scripture (Jews or Christians) whether male or female. It has been mentioned earlier that the animal slaughtered by a Jew or a Christian is lawful for the Muslim to eat. As for the slaughtering done **by a woman**, it has been narrated on the authority of Ka'b Ibn Mâlik that a woman slaughtered a sheep with a stone and then the Prophet (PBUH) was asked about it and he permitted it to be eaten.[2]

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[1] Narrated by Al-Bukhârî and Muslim.

[2] Narrated by Al-Bukhârî.

4. The name of Allah must be mentioned while slaughtering the animal, because Almighty Allah says,

﴿وَلاَ تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ﴾

﴿*Eat not (O believers) of that (meat) on which Allah's Name has not been pronounced (at the time of the slaughtering of the animal), for sure it is Fisq (a sin and disobedience of Allah)...*﴾

(Qur'ân: 6: 121)

Of course this condition is correlated with another requirement: that no name other than the name of Allah is to be mentioned on the animal at the time of its slaughtering.

Proprieties related to slaughtering

1. The slaughtering is to be done in a good way by sharpening the blade of the knife – or any such thing with which slaughtering is normally done – and letting the would-be slaughtered animal die comfortably. This has been derived from the following Prophetic instruction:

"*Verily Allah has enjoined goodness to everything; so when you kill, kill in a good way and when you slaughter, slaughter in a good way. Thus, each one of you should sharpen his blade, and let the (would-be) slaughtered animal die comfortably.*"[1]

2. Turning the would-be slaughtered animal toward *qiblah*.

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[1] Narrated by Muslim.

3. Mentioning the name of Allah.

4. Saying "*Allâhu akbar*".

The last three proprieties have been derived from the following *hadîth*: It has been narrated that Jâbir Ibn `Abdullâh, may Allah be pleased with him, said that on the day of slaughter the Prophet (PBUH) slaughtered two horned rams which were black and white in color. When he turned them toward (*qiblah*), he (PBUH) said,

> *"Verily, I have turned my face toward Him Who has created the heavens and the earth hanîfâ (i.e., worshiping none but Allah Alone) according to the religion of Ibrâhîm (Abraham) and I am not of polytheists. Verily, my prayer, my sacrifice, my living, and my dying are for Allah, the Lord of the worlds. He has no partner. And of this I have been commanded, and I am one of the Muslims. O Allah! (This is) from You and to You (it is directed as an act of worship) on behalf of Muhammad and his Ummah. Bismillâh w-allâhu akbar (In the name of Allah and Allah is the Greatest)."*

Then he (PBUH) slaughtered the two rams.[1]

Udhiyah (Sacrificial Animal)

Definition and legality

Udhiyah is a camel, a cow, or a sheep which is slaughtered on the Day of Sacrifice and the three

[1] Narrated by Abû Dâwûd.

days of *Tashrîq* as a way of drawing near to Almighty Allah. The Day of Sacrifice is *`Îdul-Adhâ* or Sacrifice Feast, and the three days of *Tashrîq* are the three days following this Day of Sacrifice.

Udhiyah is obligatory upon whoever is able to afford it. The Prophet (PBUH) said,

> *"Whoever has plenty (of wealth) and does not offer udhiyah, let him not approach our musallâ (prayer place)."*[1]

Its time

Udhiyah becomes legally sufficient – i.e., is regarded as a correctly performed act of worship and thus it is acceptable, Allah willing – if slaughtered from the time after performing the *`Îd* (Feast) Prayer until the last day in the days of *Tashrîq*. Therefore, whoever slaughters his *udhiyah* before the prayer is to repeat the slaughtering with another one, for it has been narrated that the Prophet (PBUH) said,

> *"Whoever slaughters (his udhiyah) before performing the (feast) prayer, should repeat (the slaughtering) with another udhiyah instead of it, and let him whoever did not slaughter (before the prayer) do so (after it)."*[2]

One sheep is sufficient for a man and his household

It has been narrated that Abû Ayyûb Al-Ansârî, may Allah be pleased with him, said,

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[1] Narrated by Ibn Mâjah.
[2] Narrated by Al-Bukhârî and Muslim.

"During the era of the Prophet (PBUH) a man would offer one sheep as *udhiyah* on behalf of himself and his household. They would eat (from its meat) and feed (others)..."[1]

Seven or ten people can share in one animal as *udhiyah*

Ten people can share in one **camel** and offer it as *udhiyah* and **seven** people can share in one **cow** as well, and this will be sufficient for them. It has been narrated that Ibn `Abbâs, may Allah be pleased with him, said,

"We were with the Messenger of Allah (PBUH) on some journey and (the time of) *Al-Adhâ* (Sacrifice Feast) came, so (every) ten people shared in one camel and (every) seven people shared in one cow (as *udhiyah*)."[2]

Animals not sufficient as *udhiyah*s

The Prophet (PBUH) said,

"Four (animals)[3] are not sufficient as udhiyahs: (i) the one-eyed (animal) whose one-eyedness is evident, (ii) the ill (animal) whose illness is evident, (iii) the lame (animal) whose lameness is evident, and (iv)

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[1] Narrated by At-Tirmidhî and Ibn Mâjah.
[2] Narrated by At-Tirmidhî and others.
[3] "Animals" here are meant for the animals from which *udhiyah* can be offered: cows, camels, and sheep.

the broken-legged (animal) whose weakness (and leanness) are incurable."[1]

`Aqîqah (Animal Slaughtered for the Newly Born)

`Aqîqah refers to the sacrificing of one or two sheep on the occasion of the birth of a child, as a token of gratitude to Almighty Allah.

It is legally desirable that on the seventh day after the birth of a child his or her father slaughters two sheep in case of a boy – or one sheep if he cannot do two – and one sheep in case of a girl. It has been narrated on the authority of Salmân Ibn `Âmir Ad-Dabbî that the Prophet (PBUH) said,

> *"`Aqîqah is to be offered for a (newly born) boy, so slaughter (an animal) for him, and relieve him of his suffering."*

According to a *hadîth* narrated by Ahmad and At-Tirmidhî on the authority of `Â'ishah, may Allah be pleased with her, the Prophet (PBUH) was asked about *`aqîqah* and he ordered two sheep for a boy and one sheep for a girl.

It is desirable to eat from *`aqîqah*, feed others from its meat, and give out of it in charity.

Important still, the qualities required in the animal slaughtered as *`Aqîqah* is to be as first-rate and sound as the animal offered as *udhiyah*.

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[1] Narrated by Abû Dâwûd and others.

Proprieties Related to Food and Eating

1. To say *tasmiyah* on starting to eat.

2. To eat with your right hand.

3. To eat of the food nearer to you.

These three proprieties have been narrated from the following *hadîth*: It has been narrated that `Umar Ibn Abû Salamah said,

> "I was a boy under the care of the Messenger of Allah (PBUH) and my hand used to go around the dish while I was eating. So the Messenger of Allah said to me, *'O boy! Mention the name of Allah and eat with your right hand, and eat of (the food) that is nearer to you.'* Since then I have applied those instructions when eating."

Also concerning *tasmiyah*, the Prophet (PBUH) said that whoever forgets to mention the name of Allah at the beginning of his eating, can say when he remembers, "*In the name of Allah in its beginning and in its end.*"[1]

4. Not to find fault with food if you do not like it, for it has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that the (PBUH) never criticized any food (presented to him), but he would eat it if he liked it; otherwise, he would leave it.[2]

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[1] See Ibnus-Sunnî, *'Amalul-Yawmi wal-Laylah*, p. 461.
[2] Narrated by Al-Bukhârî and Muslim.

5. To wash your hand to remove the remnants of food.

6. To praise Allah and invoke him after finishing eating, for it has been narrated on the authority of Anas, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Allah is pleased with His servant who praises Him when he takes a morsel of food and who praises Him when he drinks."*[1]

It has also been authentically narrated that the Prophet (PBUH) used to invoke Allah after eating saying certain formulas expressing praising and gratitude, such as the following one,

> *"Praise be to Allah Who has provided (us and others) with food and drink, made that palatable, and made a way out for it (i.e., for excrements)."*[2]

7. To invoke Allah for whoever presents food to you. For example, you can say,

> *"O Allah! Bless for them what you have provided them, forgive them, and have mercy upon them!"*[3]

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[1] Narrated by Muslim and At-Tirmidhi.

[2] Narrated by Abû Dâwûd.

[3] Narrated by Muslim and others.

Drinks

Drinks Are Originally Lawful

Drinks are originally lawful except those which have been forbidden through a legal text. It has been narrated that Anas, may Allah be pleased with him, said,

> "I gave the Messenger of Allah (PBUH) to drink all (kinds of lawful) drinks, (including) water, *nabîdh* (water sweetened with dates), honey, and milk, (all) with this cup."[1]

Khamr (Any Intoxicant) Is Prohibited

Almighty Allah says,

> ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالأَنصَابُ وَالأَزْلاَمُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ﴾

> ﴾*O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, Al-Ansâb and Al-Azlâm (arrows for seeking luck or decision) are an abomination of Shaytân's (Satan's) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful.*﴿

(Qur'ân: 5: 90)

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[1] Narrated by Muslim and At-Tirmidhî.

And, the Prophet (PBUH) said,

> *"Allah has cursed khamr, the one who drinks it, the one who serves it, the one who sells it, the one who buys it, the one who wrings it, the one for whom it is wrung, the one who carries it, and the one to whom it is carried."*[1]

Every intoxicant is *khamr*

It has been narrated that the Prophet(PBUH)said,

> *"Every intoxicant is khamr, and every khamr is prohibited."*[2]

Also, it has been narrated on the authority of Jâbir, may Allah be pleased with him, that a person came from Jayshan, a town of Yemen, and he asked the Messenger of Allah (PBUH) about the wine which was drunk in their land and which was prepared from millet and was called *mizr*. The Messenger of Allah (PBUH) asked whether that was intoxicating. He answered in the affirmative and thereupon the Messenger of Allah (PBUH) said,

> *"Every intoxicant is forbidden. Verily Allah, the Exalted and Majestic, made a covenant to those who drank intoxicants to make their drink ṯînatul-khabâl."*

They (the listeners) said, "O Messenger of Allah! What is *ṯînatul-khabâl?*" He said,

> *"It is the sweat of the dwellers of Hell or the discharge of the dwellers of Hell."*[3]

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[1] Narrated by Abû Dâwûd and others.

[2] Narrated by Muslim.

[3] Narrated by Muslim and others.

Every thing that befogs the mind is *khamr*

It has been narrated that `Umar, may Allah be pleased with him, declared from the pulpit of the Prophet (PBUH),

> "*Khamr* is that which befogs the mind,"[1]

meaning that every thing which befogs and bewilders the mind is included in *khamr* and is thus prohibited. This includes opium, heroin, and the like.

Whatever intoxicates in large amounts is prohibited in any amount

Some people may wrongly think that if a little amount of an intoxicant does not befog the mind then it is not prohibited. That is why Islam takes an uncompromising stand in prohibiting intoxicants, regardless of whether the quantity is big or small. If an individual were to be permitted to take a single step along that road, other steps would follow for sure; he would start walking and then running and would not stop at any stage.

The Prophet (PBUH) said in this regard,

> *"Of that which intoxicates in a large amount, a small amount is prohibited."*[2]

He also said,

> *"If a bucketful intoxicates, a sip of it is prohibited."*[3]

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[1] Narrated by Al-Bukhari and Muslim.
[2] Narrated by Ahmad, Abû Dawud, and At-Tirmidhi.
[3] Narrated by Ahmad, Abû Dawud, and At-Tirmidhi.

Khamr is not to be used as a medicine

In his *Al-Halâlu wal-Harâmu fil-Islâm* (The Lawful and the Prohibited in Islam), *Shaykh* Yûsuf Al-Qaradâwî says that a question raised by some people which still remains to be answered concerns the use of *khamr* as a medicine. The Prophet (PBUH) answered this question when a man told him that he used wine as a medicine. The Prophet (PBUH) said,

> *"It is not a medicine but a disease."*[1]

The Prophet (PBUH) also said,

> *"Allah has sent down diseases and medicines, and has made a medicine for every disease. So, take medicine but do not use anything prohibited as a medicine."*[2]

And, with regard to intoxicants Ibn Mas`ud, may Allah be pleased with him, said,

> "Allah has not made a cure for you in what He has prohibited to you."[3]

Then Al-Qarâdâwî goes on to say that it is therefore not surprising that Islam forbids the use of alcohol and other prohibited substances as medicines. As explained by Ibnul-Qayyim, the prohibition of a thing implies avoiding and staying away from it by every means, as taking it as a medicine renders it desirable and requires keeping it at hand, and this is against the Law-Giver's purpose. Ibnul-Qayyim said,

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[1] Narrated by Muslim, Ahmad, Abû Dawud, and At-Tirmidhi.
[2] Narrated by Abû Dawud.
[3] Narrated by Al-Bukhari.

> "If *khamr* were permitted as a medicine when people would be already inclined toward it, it would provide them with an excuse to drink it for pleasure and enjoyment, especially (with the fact that) people would have the impression that it would be beneficial for their health, alleviate their complaints, and cure their diseases."[1]

Different kinds of fruit should not be mixed

It has been narrated on the authority of Abû Qatâdah that the Prophet forbade the mixing of ripe and unripe dates and also the mixing of dates and raisins (for preparing a syrup) but the syrup of each kind of fruit should be prepared separately.[2]

I has also been narrated on the authority of Jâbir, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Do not mix fresh dates and dry dates, and grapes and fresh dates for preparing nabîdh."*[3]

Such mixing is forbidden because it may lead to intoxication and the one who uses it may wrongly think that it has not reached the degree of intoxication while it has reached it. Still, the majority of scholars maintain that the forbiddance mentioned in the *hadîth* is for taking precautions against the use of intoxicants, and such drinks become prohibited

[1] See *Zâdul-Ma'âd*, 3/115-116. And see *Al-Halâlu wal-Harâmu fil-Islâm*, chapter two, the section dealing with "intoxicants".
[2] Narrated by Al-Bukhârî and Muslim.
[3] Narrated by Muslim.

only when they become intoxicating.[1] According to this view of the majority, it can be said that one may have such drinks as long as they are fresh.

The *nabîdh* made of one kind is lawful

Nabîdh generally refers to water which is sweetened with dates, raisins, and the like. Such a drink is lawful as long as it is not intoxicating.

It has been narrated that Ibn `Abbâs, may Allah be pleased with him, said,

> "*Nabîdh* would be prepared for the Messenger of Allah (PBUH) at the beginning of the night and he would drink (from) it in the morning and the following night and the following day and the night after that up to the afternoon. If anything was left out of that he would give it to his servant, or he would order that it should be poured out."[2]

He (PBUH) would order that it should be poured out if its taste had changed much.

Proprieties Related to Drinking

1. **To recite *tasmiyah*,** just as it is to be done when eating, as mentioned earlier.
2. **To use the right hand**, also as mentioned in the proprieties related to eating.
3. **To drink while sitting**, because this is better, yet is it permissible to drink while standing. It

[1] *Ar-Rawdatun-Nadiyyah*, 2/207.
[2] Narrated by Muslim.

has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said, "*No one of you should drink while standing, and whoever forgets (that) should vomit.*"[1] The forbiddance here makes the act of drinking while standing legally detestable so that such a thing may be avoided, and this is known as *karâhatu tanzîh.* To this effect it has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that the Prophet (PBUH) drank from (the well of) Zamzam in a bucket while he was standing.[2]

4. **To drink in three times** during each you breathe outside the vessel from which you drink, because it has been narrated on the authority of Anas, may Allah be pleased with him, that the Messenger of Allah (PBUH) used to breathe three times in the course of a drink,[3] i.e., he would drink in three gulps. It has also been narrated on the authority of Anas as well that the Messenger of Allah (PBUH) breathed three times (outside the vessel) in the course of a drink and said, "*It is more thirst-quenching, healthier, and more wholesome.*" Anas said, "So I also breathe three times in the course of a drink."[4]

5. **Not to breathe into the vessel** from which you drink, because the Prophet (PBUH) said,

[1] Narrated by Muslim.
[2] Narrated by Al-Bukhâri and Muslim.
[3] Narrated by Muslim.
[4] Narrated by Al-Bukhârî and Muslim.

"Whenever any one of you drinks, let him not breathe into the vessel (from which he drinks)."[1]

6. **Not to drink from the head of a bottle**, because it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Messenger of Allah (PBUH) forbade that anyone should drink from the head of a bottle.[2] This is because water outflows from its head all at the same time and this may cause liver ailment and harm the stomach. Besides, things such as mote may not be recognized while the water is flowing from the head of a bottle in such a way all at once.

7. **To start with those who are on the right side** when giving people to drink. It has been narrated on the authority of Az-Zuhrî that once a domestic sheep was milked for the Messenger of Allah (PBUH) while he was in the house of Anas Ibn Mâlik, may Allah be pleased with him. The milk was mixed with water drawn from the well in Anas's house. A tumbler of it was presented to the Messenger of Allah (PBUH) who drank from it. Abû Bakr was sitting on his left side and a Bedouin on his right side. When the Prophet (PBUH) removed the tumbler from his mouth, `Umar was afraid that the Prophet (PBUH) might give it to the Bedouin, so he said. "O Messenger of Allah! Give it to Abû Bakr who is sitting by your side." But the Prophet (PBUH) gave it to the Bedouin,

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[1] Narrated by Al-Bukhârî and Muslim.

[2] Narrated by Al-Bukhârî.

who was to his right side and said, "*You should start with the one on your right side.*"[1]

8. **To be the last to drink** if you are the one who gives others to drink. It has been narrated that the Prophet (PBUH) said, "*He who gives (people) to drink is to be the last of them to drink.*"[2]

9. **To praise Allah after drinking**, because the Prophet (PBUH) said, "*Allah is pleased with His servant who praises Him when he takes a morsel of food and who praises Him when he drinks.*"[3]

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Muslim.
[3] Narrated by Muslim and At-Tirmidhî.

Vessels

All Vessels Are Lawful Except What Has Been Prohibited Textually

All vessels are lawful except what has been prohibited through a legal text. Almighty Allah says,

﴿هُوَ الَّذِي خَلَقَ لَكُم مَّا فِي الأَرْضِ جَمِيعاً﴾

﴿*He it is Who created for you all that is on earth...*﴾

(Qur'ân: 2: 29)

Eating or Drinking out of Gold and Silver Vessels

It has been narrated that `Abdur-Rahmân Ibn Abû Laylâ said,

> "We were sitting in the company of Hudhayfah who asked for water and a Magian brought him water. But when he placed the cup in his hand, he threw it at him and said, 'Had I not forbidden him to do so more than once or twice?' He wanted to say (after that), 'I would not have done so,' adding, 'but I heard the Prophet (PBUH) saying, '*Do not wear silk or dîbâjah (a kind of silk), and do not drink in silver or golden vessels, and do not eat in plates of such metals, for such things are for the unbelievers*

in this worldly life and for us in the Hereafter."[1]

When Disbelievers' Vessels Can Be Used

If a Muslim cannot find any vessel except those of a disbeliever, it is permissible for him to wash them and eat out of them. It has been narrated that the Prophet (PBUH) said to Abû Tha`labah Al-Khushanî,

> *"As for what you have mentioned about the people of the Scripture, if you can get utensils other than theirs, do not eat out of theirs, but if you cannot get other than theirs, wash their utensils and eat out of them..."*[2]

Covering Vessels and Reciting *Tasmiyah* on Them before Sleeping

It is desirable that the Muslim covers his vessels (containing food or drink) and mention the name of Allah on them before sleeping. This is because the Prophet (PBUH) said,

> *"When night falls, keep your children close to you, for the devils spread out then, yet an hour later you can let them free. And close the gates of your houses (at night), and mention Allah's name thereupon, and cover your utensils, and mention Allah's name thereupon, (and if you do not have anything to cover your utensils with) you may put something (e.g., a piece of wood, etc.) across them."*[3]

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bukhârî and Muslim.
[3] Narrated by Al-Bukhârî, Muslim, and Abû Dâwûd.

Clothing and Adornment

The Islamic Attitude toward Clothing and Adornment

The religion of Islam allows and encourages that the Muslim should take care of his appearance and that he should dress decently, maintain his dignity, and enjoy what Allah has created for the purpose of clothing and adornment.

In Islam, clothing is to cover the body and to beautify the appearance. Also, clothing and adornment as bestowed upon human beings are one of Allah's favors to mankind, as Almighty Allah says,

﴿يَا بَنِي آدَمَ قَدْ أَنزَلْنَا عَلَيْكُمْ لِبَاساً يُوَارِي سَوْءَاتِكُمْ وَرِيشاً وَلِبَاسُ التَّقْوَى ذَلِكَ خَيْرٌ ذَلِكَ مِنْ آيَاتِ اللَّهِ لَعَلَّهُمْ يَذَّكَّرُونَ﴾

﴾*O Children of Adam! We have bestowed raiment upon you to cover yourselves (screen your private parts, etc.) and as an adornment, and the raiment of righteousness, that is better. Such are among the Âyat (proofs, evidences, verses, lessons, signs, revelations, etc.) of Allah, that they may remember (i.e. leave falsehood and follow truth).*﴿

(Qur'ân: 7: 26)

That is why the Muslim is not allowed to deviate from these two aspects, covering and adornment,

otherwise he may deviate from the way of Islam toward the path of Satan. Accordingly, Allah warns people concerning both nakedness and neglect of good appearance, as these are snares of Satan, in the following verse:

﴿يَـا بَنِـي آدَمَ لاَ يَفْتِنَنَّكُمُ الشَّيْطَانُ كَمَا أَخْرَجَ أَبَوَيْكُم مِّنَ الْجَنَّةِ يَنزِعُ عَنْهُمَا لِبَاسَهُمَا لِيُرِيَهُمَا سَوْءَاتِهِمَا﴾

﴿*O Children of Adam! Let not Shaytân (Satan) deceive you, as he got your parents (Adam and Hawwâ' [Eve]) out of Paradise, stripping them of their raiments, to show them their private parts...*﴾

(Qur'ân: 7: 27)

That is why Islam makes it obligatory on Muslims to cover their private parts, which everyone naturally feels a sense of shame at exposing them, in order that they may be distinguished from the naked animals. Islam even forbids them to uncover these private parts when they are alone so that they may attain perfection in morals and religiosity. Bahz Ibn Hakîm narrated on the authority of his grandfather that the latter said,

"I asked, 'O Messenger of Allah! What should we conceal and what can we show of our private parts?' He replied, '*Let no one see them except your wife or your bonds-woman.*' I then asked, 'What if some people live together?' He replied, '*If you can manage it, try not to let anyone see them.*' I then said, 'And what if no one is present (i.e.,

if one is alone)?' He said, '*Allah is most deserving of your modesty.*'"[1]

Allah also commands people to take their adornment while offering prayer and performing circumambulation round the Ka`bah, for these are times of worship and during them the Muslim must have good appearance. Almighty Allah says,

﴿يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِندَ كُلِّ مَسْجِدٍ﴾

﴿*O Children of Adam! Take your adornment (by wearing your clean clothes), while praying and going round (the Tawâf of) the Ka`bah...*﴾

(Qur'ân: 7: 31)

The abovementioned illustrations and comments may clearly lead us to a relevant matter, namely, that cleanliness and beautification are characteristics of Islam. In this connection it may be sufficient to confirm and illustrate this fact with the following *hadîths*:

- The Prophet (PBUH) said, "*Cleanse yourself, for Islam is cleanliness.*"[2]
- He also said, "*Cleanliness invites toward faith, and faith leads its possessor to Paradise.*"[3]
- A man came to the Prophet (PBUH) wearing cheap-looking garments. The Prophet (PBUH) asked him, "*Do you have property*?" The man

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[1] Narrated by Ahmad and others.
[2] Narrated by Ibn Hibbân.
[3] Narrated by At-Tabarânî.

answered in the affirmative and he (PBUH) asked again, "*What kind of property?*" He replied, "Allah has given me (from) all kinds of wealth." The Prophet (PBUH) then said to him, "*As Allah has given you wealth, let Him see the effects of His favor and bounty upon you.*"[1]

Yet still, it is true that good appearance, adornment, cleanliness, and beautification are allowed and encouraged by Islam, and that the Muslim is certainly free to desire beauty in his home and elegance in his clothing, shoes, and other items related to personal appearance, yet this must not lead even to an atom of pride in his heart. Once the Prophet (PBUH) said,

> "*Anyone who has an atom of pride in his heart will not enter Paradise.*"

A man then asked, "What about the one who likes to wear a handsome robe and good shoes?" The Prophet (PBUH) replied,

> "*Surely Allah is beautiful and loves beauty.*"[2]

According to another version of this *hadîth*, a handsome man came to the Prophet (PBUH) and said, "I love beauty and have been given some of it, as you see, to the extent that I dislike that anyone should have a better pair of sandals than mine. Is this pride, O Messenger of Allah?" The Prophet (PBUH) replied,

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[1] Narrated by An-Nasâ'î.
[2] Narrated by Muslim.

"No. Pride is to reject the truth and to view other people with contempt."[1]

Wearing Gold and Silk

Gold and silk are prohibited for men

Islam permits beautification and adornment as explained earlier, yet it has prohibited two kinds of adornment for men, while permitting them to women. These are, first, gold ornaments and, second, clothing made of pure silk. It has been narrated on the authority of `Alî, may Allah be pleased with him, that the Prophet (PBUH) took some silk in his right hand and some gold in his left and said,

"These two are prohibited for the males among my followers."[2]

It has also been narrated on the authority of `Umar, may Allah be pleased with him, that he heard the Prophet (PBUH) saying,

"Do not wear silk, for those who wear it in this life shall not wear it in the Hereafter."[3]

And on another occasion, the Prophet (PBUH) said referring to a silken garment,

"This is the dress of a man who has no character."[4]

Moreover, the Prophet (PBUH) once saw a gold ring on a man's hand. He immediately took it from him

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[1] Narrated by Abû Dâwûd .
[2] Narrated by Ahmad and others.
[3] Narrated by Al-Bukhârî and Muslim.
[4] Narrated by Al-Bukhârî and Muslim.

and threw it down saying, "*Does a person pick up a piece of burning coal and hold it in his hand?*" When the Prophet (PBUH) left the place, someone asked the man, "Why do you not pick it up and benefit from it?" He replied, "No, by Allah! I shall not pick it up after the Messenger of Allah (PBUH) has thrown it away."[1]

The same prohibition, which applies to gold rings, applies to what we observe among conspicuous spenders, i.e., gold pens, gold watches, gold cigarette cases and lighters, gold teeth, etc.

The question is: Why are gold and pure silk prohibited for men?

Islam's aim in this connection is to achieve certain noble educational and moral objectives. It wants to safeguard the manly qualities of men from any show of weakness, passivity, or lethargy. Allah has made the physique of man different from that of woman, and it does not befit a man to wear clothes made of fine material or to adorn his body with costly ornaments.

Furthermore, socially speaking, there is a social aim underlying these prohibitions. The prohibition of gold and silk to males is part of a broader Islamic program of combating luxuriousness in living. From the Qur'ânic point of view, luxurious living leads to weakness among nations and to their eventual downfall, and the existence of luxury is also an expression of social injustice, as only a few people can afford luxurious items at the expense of the deprived masses of people. In addition to this, luxurious living

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[1] Narrated by Muslim.

is an enemy of every call toward truth, justice, and social reform. Almighty Allah says,

﴿وَإِذَا أَرَدْنَا أَن نُّهْلِكَ قَرْيَةً أَمَرْنَا مُتْرَفِيهَا فَفَسَقُوا فِيهَا فَحَقَّ عَلَيْهَا الْقَوْلُ فَدَمَّرْنَاهَا تَدْمِيراً﴾

﴿*And when We decide to destroy a town (population), We (first) send a definite order (to obey Allah and be righteous) to those among them (or We [first] increase in number those of its population) who are given the good things of this life. Then, they transgress therein, and thus the word (of torment) is justified against it (them). Then We destroy it with complete destruction.*﴾

(Qur'ân: 17: 16)

Allah also says,

﴿وَمَا أَرْسَلْنَا فِي قَرْيَةٍ مِّن نَّذِيرٍ إِلاَّ قَالَ مُتْرَفُوهَا إِنَّا بِمَا أُرْسِلْتُم بِهِ كَافِرُونَ﴾

﴿*And We did not send a warner to a township, but those who were given the worldly wealth and luxuries among them said: 'We believe not in the (Message) with which you have been sent.'*﴾

(Qur'ân: 34: 34)

Keeping with the spirit of the Qur'ân, the Prophet (PBUH) forbade Muslims to indulge in conspicuous consumption. He not only forbade the use of gold and silk to men but also forbade men and women alike the use of gold and silver utensils.

Finally, from an economic point of view, it can be said that, since gold is a universal medium of exchange, using it to make household utensils or ornaments for men does not make sense in economic terms.

Gold and silk are permitted to women

Islam has exempted woman from the prohibition of gold and silk as it takes her feminine nature into consideration. This is because the love of jewelry and ornaments is quite natural and becoming for a woman. However, this allowance is not to be for attracting men and arousing their desires toward women. The Prophet (PBUH) said,

> *"Whenever a woman puts on perfume and goes among people so that its scent may reach them, she will be (acting like) a zâniyah (a woman who commits adultery or fornication), and any eye which is attracted to her is that of a zânî (adulterer or fornicator)."*[1]

Also, Almighty Allah warns women, saying,

﴿وَلاَ يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِن زِينَتِهِنَّ﴾

> ﴿*... And let them not stamp their feet so as to reveal what they hide of their adornment...*﴾

(Qur'ân: 24: 31)

Thus, when forbidding men to use gold and silk and when permitting women to use them, Islam

[1] Narrated by An-Nasâ'î.

considers the nature of man and the requirements of his manliness in the first case and considers the feminine nature of women in the second.

The Things Required in the Muslim Woman's Dress

1. It must cover all her body, yet scholars have differed concerning the covering of the face and the two hands. Almighty Allah says,

﴿وَقُل لِّلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلاَ يُبْدِينَ زِينَتَهُنَّ إِلاَّ مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلاَ يُبْدِينَ زِينَتَهُنَّ إِلاَّ لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُوْلِي الإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلاَ يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِن زِينَتِهِنَّ وَتُوبُوا إِلَى اللَّهِ جَمِيعاً أَيُّهَا الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ﴾

﴿*And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to show off their adornment except only that which is apparent, and to draw their veils all over Juyûbihinna (i.e. their bodies, faces, necks and bosoms, etc.) and not to reveal their adornment except to their husbands, their*

fathers, their husbands' fathers, their sons, their husbands' sons, their brothers or their brothers' sons, or their sisters' sons, or their (Muslim) women (i.e. their sisters in Islam), or the (female) slaves whom their right hands possess, or old male servants who lack vigour, or small children who have no sense of the shame of sex. And let them not stamp their feet so as to reveal what they hide of their adornment. And all of you beg Allah to forgive you all, O believers, that you may be successful.》

(Qur'ân: 24: 31)

Some scholars maintain that the words 《*that which is apparent*》 in this verse refer to such things as palms of hands or one eye or both eyes for necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.

Allah also says,

﴿يَـــا أَيُّهَا النَّبِيُّ قُل لِّأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاء الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِـــنَّ مِن جَلَابِيبِهِنَّ ذَلِكَ أَدْنَى أَن يُعْرَفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا رَّحِيمًا﴾

《*O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies. That will be better, that they should be known (as free respectable women) so as not to be annoyed. And Allah is Ever Oft-Forgiving, Most Merciful.*》

(Qur'ân: 33: 59)

Concerning the covering of the face, some scholars maintain that a Muslim woman must cover it. They have quoted certain items of proof to authenticate their view,[1] including the following verse,

﴿وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَاسْأَلُوهُنَّ مِن وَرَاءِ حِجَابٍ﴾

﴾*... And when you ask (his wives) for anything you want, ask them from behind a screen...*﴿

(Qur'ân: 33: 53)

Those scholars say that this command applies to all women and not only to the Prophet's wives simply because they all share the same reason behind the "screening" meant in the verse; that is, purity of the hearts, as Allah says right after the above quoted words, ﴾*... that is purer for your hearts and for their hearts...*﴿

On the other hand, some scholars view that it is permissible for woman to uncover her face and hands, and that covering them is legally desirable and not obligatory. They have presented a number of proof items, including the following verse,[2]

﴿وَلاَ يُبْدِينَ زِينَتَهُنَّ إِلاَّ مَا ظَهَرَ مِنْهَا﴾

﴾*... and not to show off their adornment except only that which is apparent...*﴿

(Qur'ân: 24: 31)

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[1] See *Jâmi'u Ahkâmin-Nisâ'*, 4/505.

[2] See Al-Albânî, *Jilbâbul-Mar'atil-Muslimah*.

They say that the words ﴾*that which is apparent*﴿ refer to the face and the two hands.

Finally it is worth mentioning to stress the fact that even scholars who say that it is permissible for women to uncover their faces and hands add that it is better and more befitting that they cover them. This recommendation may be more impressive when we remember the fact that this secures more safety, purity, and modesty for women during times when seduction and immorality are widespread. And, Allah knows best.

2. The Muslim woman's dress must not be an adornment in its own right, because Almighty Allah says,

> ﴾*... and not to show off their adornment except only that which is apparent...*﴿

Generally, "adornment" here includes the apparent clothes when they are decorated in such a way that draws men's attentions

3. It must be thick so that it does not reveal what is beneath it. The Prophet (PBUH) said,

> *"I will not be a witness for two types of people who are destined for the Fire: people with whips, like the tails of cows, who beat the people (i.e., tyrannical rulers who are the enemies of their own people), and women who although clothed, are yet naked, seducing and being seduced, their hair styled like the tilted humps of camels. These will not enter Paradise nor will its fragrance even reach*

them, although its fragrance reaches a very great distance."[1]

4. It must be loose enough so that it does not portray any part of the body. This is what the Prophet (PBUH) ordered concerning a garment that the wife of Usâmah Ibn Zayd wore, as narrated by Ahmad.

5. It must be neither incensed nor perfumed. It has been narrated on the authority of Abû Mûsâ Al-Ash`arî, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Whenever a woman applies perfume and passes by some people so that they may smell her fragrance, she will be (acting like) a zâniyah (a woman who commits adultery or fornication)."*[2]

6. It must not be like men's wear. The Prophet (PBUH) declared that a woman should not wear a man's clothing nor should a man wear a woman's clothing.[3] He also cursed men who imitate women and women who imitate men.[4] Aspects of such imitation include the manner of speaking, walking, dressing, moving and so on, yet what matters concerning women's wearing clothes like those of men is that these clothes must not be of those which are known to be men's wear. The same criterion applies to men's wearing clothes like those of women.

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[1] Narrated by Muslim.
[2] Narrated by An-Nasâ'î and others.
[3] Narrated by Ahmad and others.
[4] Narrated by Al-Bukhârî and others.

7. It must not resemble the dresses of disbelieving women. It has been narrated that `Abdullâh Ibn `Amr, may Allah be pleased with him, said,

> "The Messenger of Allah (PBUH) saw me wearing two items of clothing dyed in saffron, whereupon he said, '*These are the clothes (usually worn by) non-believers, so do not wear them.*'"[1]

There are other legal texts that confirm the rule stating that Muslims must not imitate disbelievers.

8. It must not be a dress of distinction, i.e., a dress which is worn for the sake of ostentation, pride, and fame. The Prophet (PBUH) said,

> *"On the Day of Resurrection, Allah will not look at the person who trails his robe behind him out of pride."*[2]

He (PBUH) also said,

> *"On the Day of Resurrection, Allah will clothe the one who wears garments of fame with garments of humiliation."*[3]

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[1] Narrated by Muslim and others.
[2] Narrated by Al-Bukhârî and Muslim.
[3] Narrated by Ahmad and others.

Questions and Answers on Part Four

Q: What is the *shar`î* ruling concerning a part that has been cut from an animal while it is alive?

A: This part is to be treated as *maytah* (dead animals) are treated, i.e., it is prohibited for eating. It has been narrated that the Prophet (PBUH) said,

> *"Whatever is cut from a beast while it is alive is maytah."*[1]

And, Allah knows best.

Q: What is the *shar`î* ruling concerning eating something impure?

A: Any thing which is considered to be from among impurities, such as insects, is prohibited for eating. And, Allah knows best.

Q: What is the *shar`î* ruling concerning eating imported meats?

A: It is lawful to eat imported meats, such as chicken and canned beef, if two conditions are met: first, the meat must be from the meats which are lawful for eating, and second, the animal, fowl, etc., to which the meat in question belongs must have been slaughtered according to the Islamic way.

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[1] Narrated by Abû Dâwûd and Ibn Mâjah.

It is worth mentioning here that some companies which export meats to Islamic countries would cheat concerning the label on which they declare that their meats have been slaughtered according to the Islamic manner of slaughtering while in fact the necks of their exported chickens, for example, are sound and carry no sign of slaughtering. That is why the Muslim must be careful when dealing with such companies or eating from such meats.

Finally, imported meats which originate with the People of the Scripture are lawful for us, as this is included in the general rule stating that their food is lawful for us. Still, these imported meats, i.e., of the People of the Scripture in particular, must not include any prohibited meat, such as the flesh of swine. And, Allah knows best.

Q: Is it permissible to use something prohibited as a medicine?

A: Concerning the question of whether some of the prohibited food substances can be used as a medicine, there is a difference of opinion among scholars. Some do not consider medicine to belong to the category of a compelling necessity like food, and in support of their position they cite the following *hadîth*,

> *"Assuredly Allah did not provide a cure for you in what He prohibited to you."*[1]

Others consider the need for medicine equal to that of food, as both are necessary for preserving life. To support their view, these scholars argue that the

[1] Narrated by Al-Bukhârî.

Prophet (PBUH) allowed `Abdur-Rahmân Ibn `Awf and Az-Zubayr Ibnul-`Awwâm to wear silk because they were suffering from scabies.[1] Perhaps this latter view is closer to the spirit of Islam which is concerned with the preservation of human life. However, taking medicine containing some of the prohibited substances may be permissible only under the following conditions:

- The patient's life is endangered if he does not take this medicine.

- No alternative medication made from entirely lawful sources is available.

- The medication is prescribed by a Muslim physician who is knowledgeable and pious.

We may also remind our readers of the prohibition of using *khamr* as a medicine. The Prophet (PBUH) said when a man told him that he used wine as a medicine, "*It is not a medicine but a disease.*"[2] He (PBUH) also said as a general rule,

> "*Allah has sent down diseases and medicines, and has made a medicine for every disease. So, take medicine but do not use anything prohibited as a medicine.*"[3]

And, Allah knows best.

Q: What are the animals prohibited to Jews and Christians?

A: In the divinely revealed religions, Allah

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[1] The text of this *hadith* is quoted in the section entitled "Clothing and Ornaments".
[2] Narrated by Muslim, Ahmad, Abû Dawud, and At-Tirmidhi.
[3] Narrated by Abû Dâwûd.

prohibited to Jews the eating of many land and marine animals.[1] The Qur'ân mentions some of the things which Allah prohibited to them. The cause of prohibition was to punish them for their transgressions and sins. Almighty Allah says,

﴿وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفُرٍ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا إِلاَّ مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ ذَلِكَ جَزَيْنَاهُم بِبَغْيِهِمْ وَإِنَّا لَصَادِقُونَ﴾

﴿*And unto those who are Jews, We forbade every (animal) with undivided hoof, and We forbade them the fat of the ox and the sheep except what adheres to their backs or their entrails, or is mixed up with a bone. Thus We recompensed them for their rebellion (committing crimes like murdering the Prophets, eating of Ribâ [usury], etc.). And verily, We are Truthful.*﴾

(Qur'ân: 6: 146)

It may be assumed that Christians were also supposed to observe the same prohibitions since the *Injîl* (Gospel) declares that Prophet `Îsâ (Jesus), peace be upon him, did not come to abolish the Law of Prophet Mûsâ (Moses), peace be upon him, but to fulfill it. However, Christians made permissible things which had been prohibited in the Tawrâh (Torah), although not abrogated in the Injîl. Christians followed the teachings of Paul, who declared all foods and drinks permissible with the sole exception of the

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[1] For description of these you may refer to the Old Testament book of Leviticus, chapter eleven.

flesh of animals sacrificed to idols. Accordingly, Christians permitted themselves the eating of pork, despite the fact that the text of the Tawrâh prohibits it until this day. And, Allah knows best.

Q: What is the wisdom behind the prohibition of dead animals?

A: There are obvious reasons for this prohibition, as follows:

- Eating the flesh of a dead animal is repugnant to civilized taste and is considered by reasonable people in all societies to be contrary to human dignity.
- In whatever he does, the Muslim acts with a set purpose and intention. He is ordered to slaughter the animal he wants to eat to take him away from the category of dead animals. Almighty Allah does not desire that man should eat of what he did not intend or think of eating as is the case with the dead animal; conversely, slaughtering an animal or hunting it as game both require an intention followed by effort and subsequent action.
- If an animal died naturally, it is quite likely that it died of some acute or chronic disease, through eating a poisonous plant, or other similar causes; hence eating its flesh would probably be harmful. The same is the case when the cause of death is old age or starvation.
- By prohibiting the flesh of a dead animal to human beings, Allah provides a source of food

to animals and birds, that, in the words of the Qur'ân, constitute communities (*umam*) like ourselves. This is what actually happens, as carcasses of animals lying out in the open are devoured by birds and animals. And, Allah knows best.

Q: What is the wisdom behind the prohibition of eating every animal that has been killed by strangling, by a violent blow, by a headlong fall, or by the goring of horns, or of eating an animal that has been killed or partly eaten by a wild animal?[1]

A: The reasons why the mentioned categories of animals are prohibited can be the same reasons mentioned concerning animals that die naturally (i.e., dead animals as mentioned in the answer to the previous question). Yet still, it may be important in passing this to draw attentions to the fact that a person should be kind to his animal and protect it from harm so that it may not be neglected until it is strangled, falls from a high place, or is gored in a fight with other animals. And, Allah knows best.

Q: What is the wisdom behind the prohibition of the blood poured forth?

A: The reason for this prohibition is both that the drinking of blood is repugnant to human decency and that it may likewise be injurious to health. Also, during the pre-Islamic period, a person who felt hungry might jab a bone or a sharp object into the

[1] As mentioned in the Qur'ân (5: 3).

flesh of his animal, and collect and drink the flowing blood; thus, since piercing the flesh of a living animal injures and weakens it, Allah prohibited such a practice. And, Allah knows best.

Q: What is the wisdom behind the prohibition of flesh of swine?

A: Since the pig relishes filth and offal, its meat is repugnant to persons of decent taste. Moreover, recent medical research has shown that eating swine-flesh is injurious to health in all climates, especially hot ones. Scientific research has also shown that pork carries a deadly parasite. Perhaps science may discover in the future things that will shed more light on the wisdom of this prohibition. In addition to this, there are some scholars who say that eating pork frequently diminishes the human being's sense of shame in relation to what is indecent. And, Allah knows best.

Q: What is the *shar`î* ruling concerning making use of the skin, bones, and hair of a dead animal?

A: The prohibition concerning the dead animal is limited to the eating of its flesh. That is why it is permissible for the Muslim to make use of its skin, horns, bones, and hair, for throwing them away is a waste—something which is not permitted. It has been narrated that Ibn `Abbâs, may Allah be pleased with him, said,

> "The freed maid-servant of Maymûnah, the Prophet's wife, was given a sheep, and it

died. The Prophet (PBUH) passed by its carcass and said, '*Why do you not take its skin to be tanned and used?*' They (the listeners) replied, 'But it is dead.' The Prophet (PBUH) said, '*What is prohibited is the eating.*'"[1]

The Prophet (PBUH) made it clear that the way to purify the skin of a dead animal is to tan it. He (PBUH) said,

"*The tanning of the skin is its slaughtering,*"[2]

meaning that just as slaughtering makes the eating of the flesh of a sheep or a cow lawful, likewise tanning makes the use of the skin lawful. He (PBUH) also said,

"*Tanning removes its impurity,*"[3]

and

"*If the skin is tanned, it is purified.*"[4]

According to some scholars, including Ash-Shawkânî, the application of these latter *hadîths* is quite general, including the skin of the dog or the pig. And, Allah knows best.

Q: What is the wisdom of the Islamic manner of slaughtering?

A: The wisdom of the Islamic rules of slaughtering is to take the animal's life in the quickest and most painless way. The requirements of using a sharp

[1] Narrated Al-Bukhârî and others.
[2] Narrated by Abû Dâwûd and An-Nasâ'î.
[3] Narrated by Al-Hâkim.
[4] Narrated by Muslim and others.

instrument and of cutting the throat relate to this end. That is why it is forbidden to slit the throat by using teeth or nails since this will cause pain to the animal and is likely to strangle it. It has been narrated that the Prophet (PBUH) said,

> *"Verily Allah has enjoined goodness to everything; so when you kill, kill in a good way, and when you slaughter, slaughter in a good way. Thus, each one of you should sharpen his blade, and let the (would-be) slaughtered animal die comfortably."*[1]

And it has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that once the Prophet (PBUH) saw a man who was sharpening his knife after laying down a sheep to be slaughtered, and he (PBUH) rebuked him saying,

> *"Do you intend to make it die twice? Why did you not sharpen your knife before laying it down?"*[2]

Therefore, the main intent here is to be kind to the animal, which cannot express itself freely, and to spare it unnecessary suffering insofar as this is possible. And, Allah knows best.

Q: What is the significance of mentioning Allah's name when slaughtering an animal?

A: Mentioning the name of Allah to purify the act of slaughtering has a subtle significance. First, this practice is in opposition to the practice of idolaters and the people of pre-Islamic period who would

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[1] Narrated by Muslim.
[2] Narrated by Al-Hâkim.

mention the names of their non-existent and false deities while slaughtering animals. That is why the believer is recommended to mention the name of the true God. Second, these animals, like human beings, are creatures of Allah, and like them they have life. When depriving an animal of its life by slaughtering it, the Muslim mentions the name of Allah as a declaration of the divine permission for doing so. And, Allah knows best.

Q: What is the *shar`î* ruling concerning animals which are slaughtered for churches and Christian festivals?

A: If one does not hear from a Christian or a Jew that a name other than Allah's, such as that of `Îsâ (Jesus) or `Udhayr (Ezra), was mentioned at the time of slaughtering, the meat he offers is lawful. If, however, he hears him mentioning a name other than Allah's, it is prohibited, according to the opinion of some *faqîh*s who argue that it falls under the heading of "what has been dedicated to other than Allah". Some others maintain that the food of the People of the Scripture has been permitted to us by Allah, Who is aware of what they say when slaughtering an animal. It has been narrated that someone asked Abud-Dardâ', may Allah be pleased with him, whether he could eat the flesh of a lamb which had been given to him and which had been slaughtered for the Church of St. George. Abud-Dardâ' answered, "Are they not the People of the Scripture whose food is lawful for us and ours for them?" He then told the person (who had asked him) to eat it.[1] And, Allah knows best.

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[1] Narrated by Al-Tabarî.

Q: What is the *shar`î* ruling concerning hunting with weapons?

A: Two conditions must be met if the game is to be killed by a weapon. First, the weapon should pierce the body of the animal, making a wound. Therefore, death by mere impact does not render it lawful. It has been narrated that `Adiyy Ibn H̲âtim said,

> "I asked the Messenger of Allah (PBUH) about the game killed with a *mi`râd̲* (a weapon) and he (PBUH) said, '*If you hurl the mi`râd̲ and it pierces the game, eat it, but if it is killed by the blow of its side, do not eat it.*'"[1]

This *h̲adîth* proves that what makes the game lawful is that the body of the animal be pierced, even if the weapon is blunt. Accordingly, a game killed by a rifle or pistol or the like is lawful as the bullet will penetrate its body even more deeply than an arrow, spear, or sword.

The second condition to be met when hunting with a weapon is that the name of Allah must be mentioned when hurling or striking with the weapon, as the Prophet (PBUH) instructed `Adiyy Ibn H̲âtim. And, Allah knows best.

Q: What is the *shar`î* ruling concerning hunting with hounds and the like?

A: If hunting is done with a dog or falcon or the like, the following requirements are to be considered:

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[1] Narrated by Al-Bukhârî and Muslim.

first, it should be a trained animal; second, it should catch the game for its owner and not for itself, as the Qur'ân specifies; and third, the name of Allah must be mentioned while sending it for the chase. Almighty Allah says,

﴿يَسْـأَلُونَكَ مَاذَا أُحِلَّ لَهُمْ قُلْ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَمَا عَلَّمْتُم مِّـنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَمْسَـكْنَ عَلَـيْكُمْ وَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ سَرِيعُ الْحِسَابِ﴾

﴿*They ask you (O Muhammad) what is lawful for them (as food). Say: 'Lawful unto you are At-Tayyibât (all kind of lawful good food). And those beasts and birds of prey which you have trained as hounds, training and teaching them (to catch) in the manner as directed to you by Allah; so eat of what they catch for you, but pronounce the Name of Allah over it, and fear Allah. Verily, Allah is Swift in reckoning.'*﴾

(Qur'ân: 5: 4)

And, Allah knows best.

Q: What is the *shar`î* ruling concerning a game which is found dead?

A: It may happen that although a game is struck by an arrow it may nevertheless escape. The hunter may find it dead some time – perhaps even days – later. In such a case, the game is lawful as food under the following conditions:

- That it is not found in water. The Prophet (PBUH) said, *"If you shoot an arrow and it kills (the animal), you can eat it. But if it is found in water, you do not know whether its death was caused by drowning or by your arrow."*[1]
- That it has no wounds other than the wound inflicted by the hunter's arrow. `Adiyy Ibn Hâtim once asked the Prophet (PBUH), "What if I shoot an arrow and find the game the next morning with my arrow in it?" The Prophet (PBUH) replied, *"If you know that your arrow killed it, and you do not find any wound inflicted by wild beasts, you may eat it."*[2]
- That the game has not reached the stage of decay, as eating rotten meat is likely to be injurious. It has been narrated that the Prophet (PBUH) said to Abû Tha`labah Al-Khashnî, *"If you shoot an arrow but the game disappears for three days, and you then come upon it, you may eat what is not decayed of it."*[3] And, Allah knows best.

Q: What is the *shar`î* ruling concerning going to extremes in beautification by changing what Allah created?

A: Islam denounces such excesses in beautifying oneself as require altering one's physical features.

[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by At-Tirmidhî.
[3] Narrated by Muslim.

The Qur'ân considers such alterations as inspired by Satan, who ﴾... *will command them (his devotees) to change what Allah has created...*﴿ (Qur'ân: 4: 119) And, Allah knows best.

Q: What is the *shar`î* ruling concerning tattooing, shortening the teeth, and undergoing surgery for beautification?

A: The Messenger of Allah (PBUH) cursed the person who tattoos and the person who is tattooed, the person who shortens teeth and the one whose teeth are shortened.[1]

As for cutting or shortening the teeth, the Prophet (PBUH) cursed both the men and the women who do it and the women who request it. If a man does it, he incurs even a greater curse. Similarly, the Prophet (PBUH) prohibited widening the spaces between the teeth. It has been narrated that he (PBUH) cursed "... women who widen the gaps between their own or others' teeth for the sake of beauty, changing what Allah has created."[2]

As far as beautification surgeries (known as plastic surgeries) are concerned, some scholars are of the opinion that it may happen that a person has an unusual physical defect which attracts the attention of others to the point of inflicting physical and psychological pain every time he meets people. In this

[1] Narrated by Muslim.
[2] Narrated by Al-Bukhârî and Muslim.

case, he may treat the defect and thus alleviate the embarrassment which made his life miserable. Allah the Most Merciful has imposed no hardship on us in religion. Thus, it is not permissible to undergo any surgery for the sake of beautification unless it is needed to eliminate pain or distress in the meaning expressed above. And, Allah knows best.

Q: What is the *shar`î* ruling concerning plucking the eyebrows?

A: One of the extremes of beautification prohibited by Islam is *nams*, which means removing the hair of the eyebrows by plucking in order to thin or shape them. The Prophet (PBUH) cursed both the women who do the plucking and those who have it done.[1]

According to some Hanbalîs, if the husband approves of it, the removal of facial hair (other than that of the eyebrows) and the use of powder, creams, and other beauty aids are permitted to women, as this is part of feminine adornment. It has been narrated that once a woman asked `Â'ishah, may Allah be pleased with her, "What if a women removes the hair from her forehead to please her husband?" `Â'ishah replied, "Remove what is harmful from yourselves (you women) whenever possible."[2] And, Allah knows best.

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[1] Narrated by Abû Dâwûd.

[2] Recorded in *Fathul-Bârî*, the book on clothing.

Q: What is the *shar`î* ruling concerning wigs and hairpieces?

A: The addition of any other hair, real or artificial, to one's own hair – which is normally done by wearing wigs and hairpieces – is forbidden in Islam. It has been narrated on the authority of `Â'ishah, may Allah be pleased with her, and others that "the Messenger of Allah (PBUH) cursed the *wâsilah* and the *mustawsilah*."[1] *Wâsilah* denotes a woman whose profession is making wigs and hairpieces, and *mustawsilah* is a woman who uses them. Men are prohibited such things to an even greater degree. And, Allah knows best.

Q: What is the *shar`î* ruling concerning dyeing the hair?

A: This is an aspect of beautification which relates to dyeing the gray hair of the head or the beard. It has been narrated by Al-Bukhârî on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Jews and Christians do not dye their hair, so be different from them."*

This is not a command but only a recommendation, as is evident from the actions of the Companions, such as Abû Bakr and `Umar, who used to dye their hair, while others, such as `Alî, Ubayy Ibn Ka`b, and Anas did not.[2]

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[1] Narrated by Al-Bukhârî.

[2] Recorded in *Fathul-Bârî*, the book on dyeing the hair.

Still, it should be known that if a man is of a very advanced age, with white hair and beard, it would hardly be appropriate for him to use black dye, as on seeing the snow-white hair of the aged father of Abû Bakr, the Prophet (PBUH) said, *"Change this, but avoid black."*[1] On the other hand, Az-Zuhrî said, "We dyed our hair black when the face looked young, but discarded it when the face became wrinkled and the teeth decayed."[2] And, Allah knows best.

Q: What is the *shar`î* ruling concerning letting the beard grow?

A: It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

> *"Be different from polytheists; let the beard grow and trim the moustache."*[3]

The purpose here, as the *hadîth* states, is to be different from the polytheists. Also, shaving the beard is an affront to the masculine nature, as it is an attempt to resemble women, while the beard is an integral part of masculinity and a distinctive feature of the male sex.

However, letting the beard grow does not mean letting it grow wild or so long that it becomes a nuisance. One should certainly trim it in both length

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[1] Narrated by Muslim.
[2] Narrated by Ibn Abû `Âsim.
[3] Narrated by Al-Bukhârî.

and breadth. This has been recommended in a *hadîth* narrated by At-Tirmidhî, and moreover, the Muslims of the first generations did so.

A large number of *faqîhs* consider shaving the beard to be prohibited on the basis of the Prophet's command. They say that this command to let the beard grow renders it an obligation, especially because it is for the purpose of being different from non-Muslims, since maintenance of this distinction from those who do not believe is obligatory for Muslims.

Some modern scholars, however, permit the shaving of the beard under the impact of events in response to public opinion.

Between these two views, there is a third view which is that shaving the beard is legally detestable. This opinion is attributed to `Ayyâd as mentioned by Ibn Hajar in *Fathul-Bârî* but of no one else. And, Allah knows best.

Q: What is the *shar`î* ruling concerning the keeping of statues in the Muslim home?

A: Islam has prohibited the keeping of statues in the Muslim home. By statues is meant complete, solid figures which have not been disfigured or otherwise defaced. Their presence in a house is considered sufficient to drive away angels, who represent Allah's mercy and His pleasure, as the Messenger of Allah (PBUH) said,

"Assuredly angels do not enter a house in which there are statues (or figures)."[1]

Also, according to the commentary of scholars, a person who keeps statues in his house is similar to unbelievers who keep and venerate idols in their homes. And, Allah knows best.

[1] Narrated by Al-Bukhârî and Muslim.

Part Five

Crimes, Blood Money, Legal Punishments, and Jurisdiction

Crimes

Definition

A crime or *jinâyah* represents any act which is committed or omitted in violation of a law forbidding or commanding it and for which punishment is imposed upon conviction.

No Muslim Is to Be Harmed except for a Just Cause

The Islamic *Sharî`ah* firmly confirms that no Muslim is to be harmed in any way except according to the laws set by the *Sharî`ah*, and this is to be executed also through the *Sharî`ah* and not by individuals themselves. Almighty Allah says concerning killing,

﴿وَمَن يَقْتُلْ مُؤْمِناً مُّتَعَمِّداً فَجَزَآؤُهُ جَهَنَّمُ خَالِداً فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَاباً عَظِيماً﴾

﴿*And whoever kills a believer intentionally, his recompense is Hell to abide therein, and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him.*﴾

(Qur'ân: 4: 93)

﴿مِـنْ أجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إسْرَائِيلَ أنَّهُ مَن قَتَلَ نَفْساً بِغَـيْرِ نَفْـسٍ أوْ فَسَادٍ فِي الأرْضِ فَكَأنَّمَا قَتَلَ النَّاسَ جَمِيعاً وَمَنْ أحْيَاهَا فَكَأنَّمَا أحْيَا النَّاسَ جَمِيعاً﴾

﴿*Because of that We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind...*﴾

(Qur'ân: 5: 32)

It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

"Avoid the seven great destructive sins."

The people inquired, "O Messenger of Allah! What are they?" He said,

"To join others in worship along with Allah, to practice sorcery, to kill a life which Allah has forbidden except for a just cause, (according to Islamic law), to eat up (i.e., consume) ribâ (usury), to eat up (i.e., deplete) an orphan's wealth, to give back to the enemy and flee from the battlefield at the time of fighting, and to accuse chaste women, who would never even think of (doing) anything that would touch their chastity and are good believers."[1]

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[1] Narrated by Al-Bukhârî and Muslim.

No Man Is Allowed to Kill Himself

Just as man is forbidden to kill others, he is forbidden to kill himself. Almighty Allah says,

﴿وَلاَ تَقْـتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيماً ۝ وَمَن يَفْعَلْ ذَلِكَ عُدْوَاناً وَظُلْماً فَسَوْفَ نُصْلِيهِ نَاراً وَكَانَ ذَلِكَ عَلَى اللَّهِ يَسِيراً﴾

﴿*... And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you. And whoever commits that through aggression and injustice, We shall cast him into the Fire, and that is easy for Allah.*﴾

(Qur'ân: 4: 29-30)

It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

"Whoever purposely throws himself from a mountain and kills himself, will be in the (Hell) Fire falling down into it and abiding therein perpetually; and whoever drinks poison and kills himself with it, will be carrying his poison in his hand and drinking it in the (Hell) Fire wherein he will abide eternally; and whoever kills himself with an iron weapon, will be carrying that weapon in his hand and stabbing his abdomen with it in the (Hell) Fire wherein he will abide forever."[1]

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[1] Narrated by Al-Bukhârî and Muslim.

When Killing Is Permitted

Islam ordains that no one is to be killed except for a just cause and that this is to be determined and carried out through Islamic *Sharî`ah*. Almighty Allah says,

﴿وَلاَ تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلاَّ بِالْحَقِّ وَمَن قُتِلَ مَظْلُوماً فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَاناً فَلاَ يُسْرِف فِّي الْقَتْلِ إِنَّهُ كَانَ مَنصُوراً﴾

﴿*And do not kill anyone which Allah has forbidden, except for a just cause. And whoever is killed (intentionally with hostility and oppression and not by mistake), We have given his heir the authority (to demand Qiṣâṣ, Law of Equality in punishment, or to forgive, or to take Diyah [blood money]). But let him not exceed limits in the matter of taking life (i.e he should not kill except the killer only). Verily, he is helped (by the Islamic law).*﴾

(Qur'ân: 17: 33)

It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Prophet (PBUH) said,

"I have been ordered (by Allah) to fight against the people until they testify that there is no god but Allah and that Muḥammad is the Messenger of Allah, and to offer prayers perfectly and give the obligatory charity (Zakâh). Therefore, if they do that, then they

save their lives and property from me except for Islamic laws and then their reckoning (accounts) will be with Allah."[1]

Types of Killing

There are three types of killing:

1. **Intentional killing**, which is also known as "deliberate murder," and it is that a person intentionally kills a man whose life is not to be harmed using a thing which is most likely supposed to kill.

2. **Semi-intentional killing**, and it is that a person strikes another with a thing which does not usually kill.

3. **Unintentional killing**, which is that a person kills another by mistake when doing something allowed such as hunting.

The Consequences of Killing

In the last two types of killing, expiation is required on the part of the killer and *diyah* (blood money)[2] on the part of his *`âqilah*[3]. Almighty Allah says,

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[1] Narrated by Al-Bukhârî and Muslim.

[2] More light will soon be shed on *diyah* in a section dealing with it in particular.

[3] The killer's *`âqilah* is his male relatives who are mature, sane, and well-to-do. Accordingly, any of his relatives who is poor, female, immature, or insane is not included in the term "*`âqilah*". Also, any one who adopts a religion other than that of the killer is not included in his *`âqilah*.

﴿وَمَا كَانَ لِمُؤْمِنٍ أَن يَقْتُلَ مُؤْمِناً إِلاَّ خَطَئاً وَمَن قَتَلَ مُؤْمِناً خَطَئاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلاَّ أَن يَصَّدَّقُوا فَإِن كَانَ مِن قَوْمٍ عَدُوٍّ لَّكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِن كَانَ مِن قَوْمٍ بَيْنَكُمْ وَبَيْنَهُم مِّيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَن لَّمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ وَكَانَ اللَّهُ عَلِيماً حَكِيماً﴾

﴿It is not for a believer to kill a believer except (that it be) by mistake, and whosoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (blood money, i.e Diyah) be given to the deceased's family, unless they remit it. If the deceased belonged to a people at war with you and he was a believer; the freeing of a believing slave (is prescribed), and if he belonged to a people with whom you have a treaty of mutual alliance, compensation (blood money - Diyah) must be paid to his family, and a believing slave must be freed. And whoso finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allah. And Allah is Ever All-Knowing, All-Wise.﴾

(Qur'ân: 4: 92)

As for intentional killing, the *waliyy* (normally the heir) of the killed person has the right to choose between compensation and retaliation. Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالأُنثَى بِالأُنثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ﴾

﴾*O you who believe! Al-Qisâs (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, then adhering to it with fairness and payment of the blood money, to the heir should be made in fairness. This is an alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment.*﴿

(Qur'ân: 2: 178)

And the Prophet (PBUH) said,

> "... *and he whose relative is murdered has the option either to accept a compensation for it or to retaliate.*"[1]

The *diyah* which is received here is an alternative to *qisâs*, and that is why the two parties can reconcile without it.

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[1] Narrated by Al-Bukhârî and Muslim.

The Conditions Obligating *Qis̱âs̱* (Retaliation)

There are certain conditions which, if met, obligate *qis̱âs̱*, as follows:

1. **The killer must be *mukallf*** (legally responsible), and so there is no *qis̱âs̱* on a person who is under puberty, insane, or sleeping according to the requirements of legal responsibility or *taklîf*. The Prophet (PBUH) said,

> *"Three (persons) are exempt from (legal) responsibility: the sleeping person until he awakens, the boy until he reaches puberty, and the insane person until sanity is restored to him."*[1]

2. **The killed person must not be one of those whose blood can be lawfully shed**. The Prophet (PBUH) said,

> *"The shedding of the blood of a Muslim is not lawful except for one of three (reasons): a life for a life, (when) a married person commits adultery, and (when) a person turns aside from his religion and abandons the community (of Muslims)."*[2]

3. **The killed person must not be a son of the killer**, because the Prophet (PBUH) said,

> *"A father shall not be killed because of (killing) his son."*[3]

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[1] Narrated by Abû Dâwûd.
[2] Narrated by Al-Bukhari and Muslim.
[3] Narrated by Ibn Mâjah.

4. The killed person must not be a disbeliever and the killer a Muslim, for the Prophet (PBUH) said,

> "*A Muslim shall not be killed because of (killing) a disbeliever.*"[1]

5. The killed person should not be a slave and the killer free, because Al-H̲asan said,

> "A free person should not be killed because of (killing) a slave."[2]

This is according to the view adopted by the majority of scholars.

When *Qis̲âs̲* Is Established

Qis̲âs̲ is to be established or confirmed by either of two things:

1. Confession

It has been narrated on the authority of Anas, may Allah be pleased with him, that a Jew crushed the head of a girl between two stones. She was asked, "Who has done so to you? (Is it) so and so? So and so?" until the name of the Jew was mentioned, whereupon she nodded (in agreement). So the Jew was brought and was questioned until he confessed. The Prophet (PBUH) then ordered that his head be crushed with stones.[3]

2. The testimony of two upright witnesses

It has been narrated that Râfi` Ibn Khadîj said,

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[1] Narrated by Al-Bukhârî and others.
[2] Narrated by Abû Dâwûd.
[3] Narrated by Al-Bukhârî and Muslim.

> "One morning a man from the Anṣâr was (found) killed in Khaybar. His *awliyâ'* (plural of *waliyy*) went to the Prophet (PBUH) and mentioned that to him, whereupon he (PBUH) said, '*Do you have two witnesses to testify that your man has been killed (by a certain person)?*' They said, 'O Messenger of Allah! No Muslim was there (in the place where he was killed). Only Jews were (there), and they would dare to do (things) more heinous than this.' He (PBUH) said, '*So select fifty (persons) from among them and let them take oaths (concerning the killing).*' Those (*awliyâ'*) refused to do that so the Prophet (PBUH) paid *diyah* for him (the killed man)."[1]

The Conditions of Fulfilling *Qiṣâṣ*

Qiṣâṣ cannot be fulfilled except when the following three conditions are met:

1. The person to whom *qiṣâṣ* is to be applied must be *mukallaf*. Therefore, if this person is young or insane, he is to be confined until he becomes *mukallaf*.

2. Those who have the right to have it fulfilled must agree to its fulfillment, so if some of them forgive the criminal *qiṣâṣ* will be cancelled. It has been narrated on the authority of Zayd Ibn Wahb that a case was submitted to `Umar, may Allah be pleased with him, and it concerned a man who killed another man then the *awliyâ'* (plural of *waliyy*) of the

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[1] Narrated by Abû Dâwûd.

latter wanted that the killer be killed but the killed man's sister – who was also the killer's wife – said that she had forgiven (the killer due to) her share concerning (the killing of) her husband. Thereupon `Umar, may Allah be pleased with him, said, "The man has been saved from killing."[1]

3. The *qisâs* must not extend to someone other than the criminal, so if a pregnant woman is to be executed, she is to be granted respite until she delivers her baby and feeds him with the first product of breast milk. It has been narrated that a woman of Ghâmid, a branch of Azd, came to the Prophet (PBUH) and said, "O Messenger of Allah! Purify me," whereupon he said, "*Woe be upon you! Go back and beg forgiveness from Allah and turn to Him in repentance.*" She said, "I find that you intend to send me back as you sent back Mâ`iz. Ibn Mâlik." He (PBUH) said, "*What has happened to you?*" She said that she had become pregnant as a result of *zinâ*. He (PBUH) said, "*Is it you (who has done that)?*" She said, "Yes." He (PBUH) said to her, "*(You will not be punished) until you deliver what is there in your womb.*" One of the Ansâr became responsible for her until she delivered (the child). Then he (that Ansârî) came to the Messenger of Allah (PBUH) and said that the woman of Ghâmid had given birth to a child. He (PBUH) said, "*In that case we shall not stone her and so leave her child with none to suckle him.*" One of the Ansâr got up and said, "O Messenger of Allah! Let the responsibility of his suckling be upon me." She was then stoned to death.[2]

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[1] See *Al-Irwâ'*, 2225.

[2] Narrated by Muslim.

How and by Whom *Qiṣâṣ* Is Applied

Originally, a murderer is to be killed in the same way he has killed his victim, because this is how the principle of equality can be established.[1] Almighty Allah says,

﴿وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ﴾

﴿*... for the prohibited things, there is the Law of Equality (Qiṣâṣ). Then whoever transgresses the prohibition against you, you transgress likewise against him...*﴾

(Qur'ân: 2: 194)

and says,

﴿وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُم بِهِ﴾

﴿*And if you punish, then punish with the like of that with which you were afflicted...*﴾

(Qur'ân: 16: 126)

And, we have quoted earlier how the Prophet (PBUH) ordered that the head of Jew be crushed with stones because that Jew had crushed the head of a girl with stones.[2]

As unanimously agreed upon by scholars, *qiṣâṣ* is to be executed by those in authority and it is not permissible for the *waliyy* of a killed person to

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[1] To this effect some render the term "*qiṣâṣ*" as "the law of equality in punishment" and this is also included in the word "retaliation".

[2] Narrated by Al-Bukhârî and Muslim.

retaliate by himself and kill the killer, because this is apt to cause mischief.[1]

Qisâs concerning Things Other than Killing

Qisâs is also applicable concerning things other than killing, and "other than" generally refers to crimes which are less than murder in degree such as breaking an organ, gouging out an eye, etc. Almighty Allah says,

﴿وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالأَنفَ بِالأَنفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ﴾

﴾*And We ordained therein for them: 'Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.'...*﴿

(Qur'ân: 5: 45)

Though this ruling concerned people who were before us, yet it is applicable to us as well because the Prophet (PBUH) affirmed it. It has been narrated that Ar-Rubayyi` the daughter of An-Nadr Ibn Anas broke the front tooth of a girl. They (her family) offered to pay compensation but they (the other party) insisted to retaliate. Then her brother, Anas, went to the Messenger of Allah (PBUH) and said, "O Messenger of Allah! Would you (really) break the front tooth of Ar-Rubayyi`? (I adjure you) by Him Who has sent you with truth not to break her front tooth." The Prophet (PBUH) said, "*O Anas! (It is the*

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[1] See *Al-Jâmi`u li-Ahkâmil-Qur'ân*, 2/245-246.

judgment of) Allah's Book: retaliation." Then the people (of the girl) accepted (to disclaim retaliation) and forgave (Ar-Rubayyi`), so the Messenger of Allah (PBUH) said,

> *"Verily, there are some of Allah's servants to whom Allah responds (positively) when they swear by Him."*[1]

Still, to apply *qisâs* in things other than killing, certain conditions must be met, as follows:

1. The criminal must be *mukallaf*.

2. The crime in question must have been committed on purpose. This is because even if a person is "killed" by mistake, this does not obligate *qisâs*, so it is more becoming that no *qisâs* is applied in cases less than killing when the crime in question is committed unintentionally.

3. The blood of the victim must be equivalent to that of the criminal, so retaliation is not to be applied to a free person for wounding a slave or to a father for wounding his son, for example.

It is worth mentioning before finishing this topic that whenever *qisâs* concerning "wounds and the like" causes harm to the criminal more than that which the latter has caused to the victim and there is no way to avoid such excessiveness, *qisâs* is not obligatory and *diyah* is to be judged as the alternative to it.

Diyah will be elaborated on as follows.

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[1] Narrated by Al-Bukhâri and others.

Diyah (Blood Money)

Diyah is the money or property paid because of some crime that a person has committed, and it is to be paid to the victim or his *waliyy*.

Concerning the value of *diyah* in general, it has been narrated on the authority of `Amr Ibn Shu`ayb through his father who narrated through his father, who said,

> "The value of *diyah* during the time of the Messenger of Allah (PBUH) was eight hundred *dînâr*s or eight thousand *dirham*s, and the *diyah* of the people of the Scripture was then counted as half of that of Muslims."

The narrator added,

> "That (value) remained the same until `Umar, may Allah have mercy upon him, became Caliph. He delivered a sermon and said, 'Behold! Camels have become expensive,' then `Umar enjoined that it (the value of *diyah*) was to be one thousand *dînâr*s on the people of gold (i.e., on those who would pay it in gold), twelve thousand (*dirham*s) on the people of silver, two hundred cows on the people of cows, two

thousand sheep on the people of sheep, and two hundred *hullahs*[1] on the people of *hullahs*."[2]

The Killing Obligating *Diyah*

Scholars have agreed that *diyah* is a must in killing by mistake (unintentional killing) and semi-intentional killing, and that it is required in intentional killing only if the perpetrator does not meet any of the conditions of *taklîf* (legal responsibility) as when he is under puberty or insane. It is also a must in intentional killing in such cases as when a free person kills a slave.[3]

Types of *Diyah*

Diyah is of two types: *mukhaffafah* (lightened) and *mughallazah* (hardened).

1. *Diyah mukhaffafah* (lightened blood money) is that which is paid in case of killing by mistake or unintentional killing.

Almighty Allah says,

﴿وَمَا كَانَ لِمُؤْمِنٍ أَن يَقْتُلَ مُؤْمِناً إِلاَّ خَطَئاً وَمَن قَتَلَ مُؤْمِناً خَطَئاً فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ وَدِيَةٌ مُّسَلَّمَةٌ إِلَى أَهْلِهِ إِلاَّ أَن

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[1] *Hullah* refers to an *izâr* (wrapper) and a *ridâ'* (garment) as one unit from any kind of clothing. By "one unit" it is meant that "*hullah*" is called as such only when referring to two pieces of clothing.

[2] Narrated by Abû Dâwûd. See *'Awnul-Ma'bûd*, 12/285.

[3] For more details about the types of killing you may revise the section dealing with this in this part of the book.

يَصَّدَّقُوا فَإِن كَانَ مِن قَوْمٍ عَدُوٍّ لَّكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ وَإِن كَانَ مِن قَوْمٍ بَيْنَكُمْ وَبَيْنَهُم مِّيثَاقٌ فَدِيَةٌ مُّسَلَّمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ فَمَن لَّمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ وَكَانَ اللَّهُ عَلِيماً حَكِيماً﴾

﴿*It is not for a believer to kill a believer except (that it be) by mistake, and whosoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (blood money, i.e Diyah) be given to the deceased's family, unless they remit it. If the deceased belonged to a people at war with you and he was a believer; the freeing of a believing slave (is prescribed), and if he belonged to a people with whom you have a treaty of mutual alliance, compensation (blood money - Diyah) must be paid to his family, and a believing slave must be freed. And whoso finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allah. And Allah is Ever All-Knowing, All-Wise.*﴾

(Qur'ân: 4: 92)

And, it has been narrated on the authority of `Amr Ibn Shu`ayb through his father who narrated through his father that the Messenger of Allah (PBUH) judged that the *diyah* required for killing a person by mistake is to be a hundred camels (as follows): thirty

bint mahkâds,[1] thirty *bint labûns*[2], thirty *hiqqahs*,[3] and ten *ibn labûns*[4].[5]

2. *Diyah mughallazah* (hardened blood money) is that which is paid in case of semi-intentional killing.

The value of *diyah mughallazah* (hardened blood money) is one hundred camels forty of which are pregnant, as judged by the Prophet(PBUH)concerning semi-intentional murder.[6] This kind of *diyah* is to be paid from the property of the criminal alone.

Diyah in intentional killing

The *diyah* of intentional murder is paid if the *waliyy* of the murdered person chooses that the killer is not to be killed, i.e., when he takes the option of compensation and not that of retaliation. This *diyah* is to be paid according to the amount on which the two parties reconcile. It has been narrated on the authority of `Amr Ibn Shu`ayb through his father who narrated through his father that the Prophet (PBUH) said,

> *"Whoever commits intentional murder, his (case) is to be in the hands of the awliyâ' (plural of waliyy) of the killed person. They can (have the killer) killed if they wish, and they can take diyah if they wish, and (in*

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[1] *Bint makhâd* is a one-year-old she-camel.
[2] *Bint labûn* is a two-year-old she-camel.
[3] *Hiqqah* is a three-year-old she-camel.
[4] *Ibn Labûn* is a two-year-old male camel.
[5] Narrated by Abû Dâwûd and Ibn Mâjah.
[6] Narrated by Abû Dâwûd, Ibn Mâjah, and An-Nasâ'î.

this case diyah) is: thirty hiqqahs, thirty jadh`ahs,[1] *and forty pregnant she-camels. And what they reconcile on will be theirs (i.e., if they agree to increase the diyah, the increase will be theirs)...*"[2]

Who Is to Pay *Diyah*?

1. In the case of intentional killing, *diyah* is obligatory on the killer if *qisâs* is cancelled. It has been narrated that Ibn Shihâb said,

> "It became customary that, concerning intentional killing if the *awliyâ'* of the killed person forgave (the killer and accept *diyah*), *diyah* was to be paid by the killer unless his *`âqilah* helped him willingly."[3]

2. In the case of semi-intentional killing and killing by mistake, *diyah* is obligatory on the killer yet his *`âqilah* pays it on his behalf if he has a *`âqilah*, and this paying is done in terms of cooperation. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that two women from Hudhayl fought with each other and one of them hit the other with a stone that killed her and what was in her womb. The relatives of the killer and the relatives of the victim submitted their case to the Prophet (PBUH) who judged that the *diyah* for the fetus was a male or female slave and the *diyah* for the killed woman was to be paid by the *`âqilah* of the killer.[4]

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[1] *Jadh`ah* is a four-year-old she-camel.
[2] Narrated by At-Tirmidhî and Ibn Mâjah.
[3] Narrated by Mâlik.
[4] Narrated by Al-Bukhârî and Muslim.

The *Diyah* of Woman

The *diyah* required for the killing of a woman by mistake is a half of the *diyah* required for a man, and her limbs and wounds are to be treated in the same way, as judged by `Umar, may Allah be pleased with him, according to the narration of Shurayh.[1]

The *Diyah* of the People of the Scripture

If a man from the people of the Scripture – Jews and Christians – is killed by mistake, his *diyah* is a half of the *diyah* of a Muslim man, and the *diyah* of a woman from them is also a half of the *diyah* required for a Muslim woman. It has been narrated on the authority of `Amr Ibn Shu`ayb through his father who narrated through his father that the Messenger of Allah (PBUH) judged that the *diyah* of (any of) the people of the Scripture, Jews and Christians, is a half of the *diyah* of a Muslim.[2]

The *Diyah* of a Fetus

If a fetus dies because of attempting the life of its mother intentionally or by mistake and the mother is not killed, the *diyah* required for that is a *ghurrah*, which is a male slave or a female slave. This ruling applies whether the fetus is male or female. Still, if the mother is killed along with the fetus, her *diyah* is to be paid. As quoted earlier, it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that two women from Hudhayl fought with

[1] See *Al-Irwâ'*, 7/307.
[2] Narrated by Ibn Mâjah and others.

each other and one of them hit the other with a stone that killed her and what was in her womb. The relatives of the killer and the relatives of the victim submitted their case to the Prophet (PBUH) who judged that the *diyah* for the fetus was a male or female slave and the *diyah* for the killed woman was to be paid by the *`âqilah* of the killer.[1]

Yet still, if the fetus goes out of its killed or wounded mother alive then dies, *diyah* is to be paid in full: one hundred camels if the fetus is male and fifty camels if it is female.

The *Diyah* for Things Other than Killing

A person may be attacked and any of his organs or senses may be damaged or anything other than killing may happen to him. The *diyah* required for such crimes can be listed as follows:

1. As far as *diyah* for damaging organs is concerned, if an odd organ such as the nose and the tongue is damaged, *diyah* is to be paid in full. And if an organ which constitutes a "pair" such as the "two" eyes and the "two" hands is damaged, a half of *diyah* is to be paid. Also, if one eye – or one hand, etc. – is damaged, a half of *diyah* is to be paid. Also a half of *diyah* is to be paid for damaging the eyelids of one eye, and if one eyelid is damaged only one fourth of *diyah* is to be paid. Moreover, *diyah* is to be paid in full for damaging the fingers of the two hands or toes of the two feet, and if one finger is damaged ten camels are to be paid and so on according to the

[1] Narrated by Al-Bukhârî and Muslim.

number of the damaged fingers or toes. And, *diyah* is to be paid in full for damaging all teeth, and five camels are to be paid for each tooth, according to the number of the damaged teeth.

This is according to the guidance of the Prophet (PBUH) in the *ḥadîths* narrated about him in this regard.[1]

Interestingly enough, if the sound eye of a one-eyed person is damaged, he deserves a full *diyah*, as judged by `Umar, his son `Abdullâh, and `Alî, may Allah be pleased with them.[2]

2. If a person is hit and loses any of his senses, such as hearing, sight, or taste, *diyah* is to be paid in full for each of these senses.

It has been narrated on the authority of `Awf that a man was thrown with a stone in his head and lost his (senses related to) hearing, tongue, sanity, and male organ, and he was no longer able to approach women (i.e., he became sexually incompetent), so `Umar, may Allah be pleased with him, judged that four *diyahs* were to be paid (one *diyah* for each sense).[3]

3. If a person is hit in his head or face, the *diyah* for that is to be paid as follows:

- If the strike reaches the bone, five camels are to be paid.

- If the bone is broken, ten camels are to be paid.

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[1] See *Al-Irwâ'*, 2275.
[2] See *Al-Irwâ'*, 2270.
[3] Narrated by Al-Bayhaqî.

- If the bone is moved from one place to another, fifteen camels are to be paid.

- If the strike reaches the brain or is about to reach it to such an extent that only a thin piece of skin separates it from it, one third of *diyah* is to be paid.

4. If a person is hit and the strike reaches his **inside**, i.e., if it penetrates such things as his belly, his back, his chest, his throat, and his bladder, one third of *diyah* is to be paid.

Legal Punishments

Legal punishments or *hudûd* refer to the penalties that have been enjoined by the *Sharî`ah* concerning certain acts of disobedience so that they may not be committed again.

These legal punishments must be applied. The Prophet (PBUH) said about acting upon these *hudûd*,

> *"It is better for the inhabitants of the earth to act upon (i.e., execute) a legal punishment than being supplied with rain for forty mornings."*[1]

And, he (PBUH) was very firm concerning this matter. It has been narrated that `Â'ishah, may Allah be pleased with her, said,

> "The people of Quraysh were anxious over the lady from Banû Makhzûm who had committed theft. They asked, 'Who will intercede for her with the Messenger of Allah?' Some said, 'No one would dare to do so except Usâmah Ibn Zayd the beloved one to the Messenger of Allah.' When Usâmah spoke about that to the Messenger of Allah (PBUH), he said (to him), *'Do you try to intercede for somebody in a case connected with the punishments prescribed by Allah?'* Then he got up and delivered a sermon

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[1] Narrated by Ibn Mâjah and An-Nasâ'î.

saying, '*What destroyed the nations preceding you, was that if a noble amongst them stole, they would forgive him, and if a poor person amongst them stole, they would inflict Allah's legal punishment on him. By Allah, if Fâṯimah, the daughter of Muẖammad stole, I would cut off her hand.*'"[1]

Legal Punishments Are Expiations

Whoever commits any of the crimes for which the *Sharî'ah* has prescribed certain punishments then he receives the punishment specified for this crime, that will be an expiation for him in this worldly life. It has been narrated that 'Ubâdah Ibnus-Sâmit, may Allah be pleased with him, said,

"I, along with a group of people, gave the pledge of allegiance to Messenger of Allah (PBUH). He said, '*I take your pledge on the condition that you will not join partners in worship with Allah, will not steal, will not commit zinâ, will not kill your offspring, will not slander, and will not disobey me when I order you to do good. Whoever among you will abide by his pledge, his reward will be with Allah, and whoever commits any of those sins and receives the punishment in this world, that punishment will be an expiation for his sin and purification; but if Allah screens him, then it will be up to Allah to punish him if He wills or excuse Him if He wills.*'"[2]

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bukhârî and Muslim.

Who Is to Execute Legal Punishments?

Legal punishments are to be executed only by the *imâm* (the ruler and the like) or by his deputy. This is because the Prophet (PBUH) used to execute legal punishments during his time and so did his successors after him. Also, he (PBUH) would deputize someone to execute some legal punishment instead of him, as it has been narrated that he ordered a person called Unays Al-Aslamî to go to the woman of a man (in a case that had been submitted to him), and ordered him that if she confessed (adultery) he (Unays) was to stone her (to death). Unays did that and the woman confessed so he stoned her to death.[1]

The Crimes to Which Legal Punishments Are Connected

According to the Qur'ân and the *Sunnah*, there are certain punishments for certain crimes. The legal punishments which are known as *hudûd* are connected to the following crimes: *zinâ* (adultery or fornication), *qadhf* (slanderous accusation), theft, drinking *khamr* (intoxicants), *muhârabah* (also *harâbah*, waging war against Allah and His Messenger and doing mischief), and apostasy.

More light will be shed on each legal punishment according to the implementations and description of the crime to which it is connected.

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[1] Narrated by Al-Bukhârî, Muslim, and others.

The Legal Punishment of *Zinâ* (Adultery or Fornication)

Zinâ is one of the major and most heinous sins. Almighty Allah says,

﴿وَلاَ تَقْرَبُوا الزِّنَى إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلاً﴾

> ﴿*And come not near to the unlawful sexual intercourse. Verily, it is a Fâhishah (i.e. anything that transgresses its limits [a great sin]), and an evil way (that leads one to Hell unless Allah forgives him).*﴾
>
> (Qur'ân: 17: 32)

A person who commits *zinâ* is either *muhsan* or non-*muhsan*. A *muhsan* person is one who has experienced sexual intercourse through a valid marriage, whereas a non-*muhsan* person is one who has not married yet; a virgin.

The legal punishment of a *muhsan* person

If a *muhsan* person, who is free and legally responsible (*mukallaf*), commits *zinâ* willingly, he is to be stoned to death.[1] It has been narrated on the authority of Jâbir Ibn `Abdullâh that a man from Aslam came to the Messenger of Allah (PBUH) and told him that he had committed *zinâ*. He testified four times that he had done that, so the Prophet (PBUH) ordered that he be stoned to death as he was *muhsan*.[2]

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[1] Accordingly, this punishment is not to be inflicted to a person who is insane, immature, or a slave.

[2] Narrated by At-Tirmidhî and Abû Dâwûd.

It is also worth mentioning here to quote the following version:

It has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, in a long *hadîth* that – as part of this *hadîth* - `Umar Ibnul-Khattâb, may Allah be pleased with him, delivered a sermon and said,

> "... Allah sent Muhammad with the truth and revealed the Book (the Qur'ân) to him, and among what Allah revealed was the verse of *rajm* (the stoning of a *muhsan* person (male and female), who commits illegal sexual intercourse, to death), and we did recite this verse and understood and memorized it. The Messenger of Allah (PBUH) did carry out the punishment of stoning and so did we after him. I am afraid that after a long time has passed, somebody will say, 'By Allah, we do not find the verse of *rajm* in Allah's Book,' and thus they will go astray by leaving an obligation which Allah has revealed. And the punishment of *rajm* is to be inflicted to any *muhsan* person (male or female) who commits illegal sexual intercourse (*zinâ*), if the required evidence is available or there is conception or confession..."[1]

The legal punishment of a non-*muhsan* person

The legal punishment of a non-*muhsan* person who commits *zinâ* has been defined in the following verse,

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[1] Narrated by Al-Bukhârî, Muslim, and others.

﴿الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُم بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ﴾

﴿*The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the Last Day. And let a party of the believers witness their punishment.*﴾

(Qur'ân: 24: 2)

And, it has been narrated that Zayd Ibn Khâlid said,

"I heard the Prophet (PBUH) ordering that a non-*muhsan* person guilty of illegal sexual intercourse be flogged one hundred stripes and be exiled for one year. `Umar Ibnul-Khattâb also sentenced exile to such a person, and this tradition is still valid."[1]

With what is this legal punishment confirmed?

This legal punishment is confirmed as applicable by means of either of two things: confession or witnesses.

As for confession, it has been authentically narrated that the Prophet (PBUH) applied *rajm* (stoning to death) to Mâ`idh and Al-Ghâmidiyyah after they had confessed that they committed adultery.[2]

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bukhârî and others.

As for witnesses in this regard, Almighty Allah says,

﴿وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلاَ تَقْبَلُوا لَهُمْ شَهَادَةً أَبَداً وَأُولَئِكَ هُمُ الْفَاسِقُونَ﴾

﴾*And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fâsiqûn (liars, rebellious, and disobedient to Allah).*﴿

(Qur'ân: 24: 4)

Therefore, if **four upright Muslim persons** testify that they have seen such and such a man committing *zinâ* by inserting his male organ into the vagina of such and such a woman just like an eye pencil is inserted into a kohl jar, the legal punishment of *zinâ* is to be applied to the man and the woman.

Committing *zinâ* with a *mahram* (unmarriageable) woman

If a man commits *zinâ* with a *mahram* woman, he is to be executed whether he is *muhsan* or not, and if he marries her, he is to be executed and his property is to be taken from him. It has been narrated that Al-Barâ', may Allah be pleased with him, said that once he met his uncle and asked him where he was going. The man said, "The Messenger of Allah (PBUH) has sent me to a man who has married the wife of his father after him, to behead him and take his property."[1]

[1] Narrated by Abû Dâwûd and others.

Committing *zinâ* with a beast

It has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

> *"Whoevermounts a beast (i.e., has intercourse with it), kill him and kill the beast."*[1]

The legal punishment of sodomy

If a man has intercourse with another man, and this is known as sodomy, the two men are to be executed whether they are *muhsan* or not. It has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

> *"Whenever you find a man committing the act of the people of (Prophet) Lût (Lot) (i.e., committing sodomy), kill the doer (of the act) and the one to whom it is done."*[2]

The Legal Punishment of *Qadhf* (Slanderous Accusation)

Qadhf is that a person accuses another of committing *zinâ*. This may be expressed in different ways, such as calling a person with the words "O adulterer," for example, or with any other words from which such a slanderous accusation is understood.

This *qadhf* is one of the major sins. Almighty Allah says,

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[1] Narrated by At-Tirmidhî and others.
[2] Narrated by At-Tirmidhî and others.

﴿إِنَّ الَّذِيـــنَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ لُعِنُوا فِي الدُّنْيَا وَالْآخِرَةِ وَلَهُمْ عَذَابٌ عَظِيمٌ﴾

﴿*Verily, those who accuse chaste women, who never even think of anything touching their chastity and are good believers, are cursed in this life and in the Hereafter, and for them will be a great torment.*﴾

(Qur'ân: 24: 23)

And it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

"Avoid the seven great destructive sins."

The people enquired, "O Messenger of Allah! What are they?" He said,

"To join others in worship along with Allah, to practice sorcery, to kill a life which Allah has forbidden except for a just cause, (according to Islamic law), to eat up (i.e., consume) ribâ (usury), to eat up (i.e., deplete) an orphan's wealth, to give back to the enemy and flee from the battlefield at the time of fighting, and to accuse chaste women, who would never even think of (doing) anything that would touch their chastity and are good believers."[1]

The legal punishment of *qadhf* is that the person who commits it is to be flogged with eighty lashes. Almighty Allah says,

[1] Narrated by Al-Bukhârî and Muslim.

﴿وَالَّذِيـــنَ يَـــرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلاَ تَقْبَلُوا لَهُمْ شَهَادَةً أَبَداً وَأُولَئِكَ هُمُ الْفَاسِقُونَ﴾

﴿*And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fâsiqûn (liars, rebellious, and disobedient to Allah).*﴾

(Qur'ân: 24: 4)

When a man accuses his wife of adultery

If a man accuses his wife of adultery and she belies him, the legal punishment of *qadhf* is to be inflicted to him unless he does either of two things: to prove that she has committed adultery by bringing four witnesses or to apply *li`ân* (oath of condemnation) with her. Almighty Allah says,

﴿وَالَّذِيـــنَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلاَّ أَنفُسُهُمْ فَشَـــهَادَةُ أَحَدِهِـــمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ۞ وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِن كَانَ مِنَ الْكَاذِبِينَ ۞ وَيَدْرَأُ عَنْهَا الْعَذَابَ أَن تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ۞ وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِن كَانَ مِنَ الصَّادِقِينَ﴾

﴿*And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. And the*

fifth (testimony) (should be) the invoking of the Curse of Allah on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a lie. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks the truth.

(Qur'ân: 24: 6-9)[1]

The Legal Punishment of Drinking *Khamr* (Intoxicants)

Khamr refers to all kinds of intoxicants, and it is prohibited as ordained by Allah and His Messenger.[2]

If a person drinks *khamr* willingly while knowing that what he drinks is *khamr*, he is to be flogged with forty lashes, and the ruler – or the judge – can increase it up to eighty lashes if he sees that this is befitting. It has been narrated that `Alî, may Allah be pleased with him, flogged Al-Walîd Ibn `Uqbah with forty (lashes) for drinking *khamr* then said,

> "The Prophet (PBUH) flogged (those who drank *khamr*) with forty (lashes) and so did Abû Bakr (yet) `Umar made it eighty. Each (of these judgments) is a tradition and I like this (tradition of forty lashes) more (than that adopting eighty lashes)."[3]

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[1] For more details about *li`ân*, you may review it in the section dealing with it in the part on "Separation between Spouses" in this book.

[2] For more details about *khamr*, you may review it in the section dealing with "Drinks" in this book.

[3] Narrated by Muslim.

With what is this legal punishment confirmed?

The legal punishment of *khamr* drinking is confirmed as applicable by means of either of two things:

1. **Confession**
2. **Or two upright witnesses**

The Legal Punishment of Theft

Islam ordains that the Muslim must gain his livelihood and gain money in general through legal means and that he must not gain anything through any unlawful means. Theft, which can be defined as clandestinely taking the property of a person, is one of the illegal means through which a person may gain or collect money or any other item of property, and it is one of the major sins.

The legal punishment of theft is confirmed by the Qur'ân, the *Sunnah*, and the consensus of scholars.

Almighty Allah says,

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالاً مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾

﴾*Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise.*﴿

(Qur'ân: 5: 38)

It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Messenger of Allah (PBUH) cut off the hand of a thief for stealing a shield that was worth three *dirhams*.[1]

Ibnul-Mundhir has stated that scholars have unanimously agreed that **two upright, free, and Muslim witnesses** are required so that the punishment of theft can be applied.[2] Also the thief's confession confirms the application of the punishment.

Two conditions are required for inflicting the punishment of theft:

1. The value of the stolen object must not be less than the minimum value of the stolen object (***nisâb***) which obligates the application of the punishment as defined by the Prophet (PBUH) in the following *hadîth*,

> *"The hand should be cut off for stealing something that is worth a quarter of a dînâr or more."*[3]

2. The stolen object must be in a *hirz* when it is stolen. A *hirz* is a thing in which money and other items of property are kept such as closets for keeping money, stores for keeping commodities, etc. Ibnul-Mundhir has stated that scholars have unanimously agreed that the cutting required for theft is inflicted to whoever steals a thing whose value obligates cutting from a *hirz*.[4] In other words, scholars have

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[1] Narrated by Al-Bukhârî and Muslim.

[2] *Al-Ijmâ`*, 140.

[3] Narrated by Al-Bukhârî and Muslim.

[4] *Al-Ijmâ`*, 139.

unanimously agreed that a person deserves that the theft-oriented cutting be inflicted to him if he steals a thing whose value obligates this cutting – as pinpointed above – and as long as he steals this thing from a *hirz*.

The owner of the stolen object can forgive the thief before submitting the case to the ruler or the judge.[1]

When a person steals more than one time

The author of *Ar-Rawdatun-Nadiyyah* says that scholars have agreed that if a person steals for the first time, his right hand is to be cut off, and if he steals again, his left foot is to be cut off. Then the author adds that scholars have differed as concerning the case of a man who steals for the third time after cutting his right hand and his left foot: most of them maintain that his left hand is to be cut off, then if he steals after that, his right foot is to be cut off; then if he steals thereafter, a discretionary punishment (*ta`zîr*) is to be estimated for him and he is to be imprisoned (accordingly).[2]

The Legal Punishment of *Harâbah* (Doing Mischief)

Harâbah is that a group of Muslims in a Muslim land cause chaos, shed blood, rob property, dishonor people, and destroy crops and cattle, thus defying the religion, morals, and laws.

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[1] See *Sahîhu Sunani Abî Dâwûd*, 3689.
[2] See *Ar-Rawdatun-Nadiyyah*, 2/279.

This crime is one of the most heinous crimes and that is why its punishment is one of the severest prescribed punishments.

Almighty Allah says,

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الأَرْضِ فَسَادًا أَن يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُم مِّنْ خِلافٍ أَوْ يُنفَوْا مِنَ الأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الآخِرَةِ عَذَابٌ عَظِيمٌ﴾

﴿*The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter.*﴾

(Qur'ân: 5: 33)

Some scholars say that "or," which is mentioned between the items of punishment in the verse, means that the ruler can choose from these items of punishment what he sees as most befitting. Whereas, most scholars maintain that "or" here signifies variation, in the meaning that the punishment varies according to the crime committed, and that these items of punishment are according to the "arrangement" of the crimes and do not signify choosing; for example, if they kill and take property, they are to be crucified,[1] and so on according to the crime committed.

[1] This example has been taken from the judgment of Ibn 'Abbâs in this regard as narrated by Ash-Shâfi'i in his *Musnad*.

The following *hadîth* is an item of proof as well as a practical application of punishment in *harâbah*:

It has been narrated that Anas, may Allah be pleased with him, said,

> "Some people from the tribe of `Ukl came to the Prophet (PBUH) and embraced Islam. The climate of Medina did not suit them, so the Prophet (PBUH) ordered them to go to the (herd of) camels of charity and to drink their milk and urine (the latter being as a medicine). They did so, and after they had recovered from their ailment (became healthy) they reverted (from Islam) and killed the shepherd of the camels and took the camels away. The Prophet (PBUH) sent (some people) in their pursuit and so they were (caught and) brought, and the Prophet (PBUH) ordered that their hands and legs should be cut off and that their eyes should be branded with heated pieces of iron, and that their cut hands and legs should not be cauterized until they die."[1]

Repenting before falling into power

If those who commit the crime of *harâbah* repent before they are caught, Allah forgives them. Almighty Allah says right after the verse quoted above,

﴿إِلاَّ الَّذِينَ تَابُوا مِن قَبْلِ أَن تَقْدِرُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ رَّحِيمٌ﴾

[1] Narrated by Al-Bukhârî and Muslim.

﴾*Except for those who (having fled away and then) came back (as Muslims) with repentance before they fall into your power; in that case, know that Allah is Oft-Forgiving, Most Merciful.*﴿

(Qur'ân: 5: 34)

Scholars have differed concerning the consequences of such repentance, but the fairest view in this concern may be the one stating that repentance cancels the punishment of *harâbah* and all the rights of Allah related to *zinâ*, drinking (*khamr*), and the cutting required for theft, yet it does not cancel the rights of people as regards property and blood (killing) unless the *waliyy* of the killed person forgives. And, Allah knows best.

Ta`zîr (Discretionary Punishment)

Ta`zîr* is a discretionary punishment which is enjoined by the ruler (or the judge) concerning a crime for which the *Sharî`ah has not specified a legal punishment, or for which the *Sharî`ah* has specified a certain punishment yet when this punishment is to be applied the conditions of implementation are not met, such as having sex with a woman without intercourse (as in kissing and caressing) and stealing something whose value is less than the value which obligates cutting the hand.

It has been narrated that the Prophet (PBUH) said,

> *"Do not flog (a person) with more than ten lashes except in a legal punishment prescribed by Almighty Allah."*[1]

It has also been authentically narrated that `Umar, may Allah be pleased with him, would discipline people through discretionary punishments, such as shaving the head, exiling, and beating. He would also burn the shops of those who traded in intoxicants.[2]

Ta`zîr may take the form of words, as in reproaching and preaching, or the form of action, as in beating and imprisonment.

Some scholars, including Ibn Hanbal, assert that no *ta`zîr* is to be with more than ten lashes because of the above-quoted *hadîth*, whereas some others, including Mâlik and Ash-Shâfi`î, maintain that it may be with more than ten lashes yet it must not reach the least legal punishments. Still, some others say that it varies according to the estimation of those in authority (meaning the ruler, his deputy, the judge, and the like) and according to the crime committed.

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[1] Narrated by Al-Bukhârî, Muslim, and Abû Dâwûd.
[2] See Inul-Qayyim, *Ighâthatul-Lahfân*.

Jurisdiction

The Legality of Jurisdiction

The legality of jurisdiction or *qadâ'* is supported by the Qur'ân, the *Sunnah*, and consensus of scholars.

Almighty Allah says,

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ﴾

﴿*And so judge (you O Muhammad) between them by what Allah has revealed...*﴾

(Qur'ân: 5: 49)

﴿يَا دَاوُودُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ﴾

﴿*Dâwûd (David)! Verily! We have placed you as a successor on earth, so judge you between men in truth (and justice)...*﴾

(Qur'ân: 38: 26)

It has been narrated on the authority of `Amr Ibnul-`Âs, may Allah be pleased with him, that he heard the Messenger of Allah (PBUH) saying,

"If a ruler (or a judge) delivers a judgment exerting the effort (required for that) and is right, he will receive two rewards; and if he delivers a judgment exerting the effort

(required for that) and is wrong, he will receive one reward."[1]

And, Muslim scholars are unanimously agreed as to the legality of jurisdiction.

Jurisdiction is a collective obligation

Jurisdiction is a collective obligation or *fard kifâyah*, in the meaning that if some Muslim in a certain place is assigned by the ruler for judging people, that will be sufficient for all the other Muslims in this place as to the obligation of judging between people.

Another aspect of the "obligation" related to jurisdiction is that the ruler "must" assign persons – according to the need of the country he rules – to judge between people. This is because the Prophet (PBUH) used to judge between people, and he also sent `Alî to Yemen for the same job. Also, the Rightly-guided Caliphs used to judge between people and appointed judges in the countries under their rule.[2]

The Excellence of Jurisdiction

The excellence of jurisdiction may be fully illustrated by the following *hadîth* narrated on the authority of Ibn Mas`ûd, may Allah be pleased with him:

> *"There is no envy*[3] *except in two: a person whom Allah has given wealth and he spends*

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[1] Narrated by Al-Bukhârî and Muslim.
[2] *Manârus-Sabîl*, 2/453.
[3] Here "envy" is translated literally yet it refers to a positive meaning: that the Muslim should like to be like the two persons mentioned in=

it in the right way, and a person whom Allah has given wisdom (i.e. religious knowledge) and he gives his decisions (and judges between people) accordingly and teaches it to the others."[1]

Who Is to Judge between People?

In his *Fat<u>h</u>ul-Barî*, Ibn <u>H</u>ajar, may Allah have mercy upon him, mentions that, according to Abû `Alî Al-Karâbîsî, a follower of Ash-Shâfi`î, there is no difference between scholars that the worthiest of people as regards the right to judge between them is a person who has the following qualities:

- To be of well-known excellence, truthfulness, knowledge, and piety.
- To be a good reciter of the Qur'ân and know most of its rules and rulings.
- To be well aware of the *Sunnah* of the Prophet (PBUH) and memorize most of it.
- To be well aware of the statements and traditions related to the Prophet's Companions and those related to their successors (Tâb`ûn) and the points of agreement and difference therein.
- To be a person who follows guidance concerning any matter first in the Qur'ân then, if he is not guided to any solution therein, he it

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=the *<u>h</u>adîth* yet without wishing that they should lose the good qualities they enjoy as the envious people normally wish. And, Allah knows best.

[1] Narrated by Al-Bukhârî and Muslim.

to search it in the *Sunnah* then the *fatwâs* delivered by the greater Companions.

- To be a person who always studies (religious knowledge and other related items of knowledge) with the people of knowledge and consult with them.
- To preserve his tongue, abdomen, and genitals against evil.
- To be able to understand the speech of litigants.
- To be reasonable and not to follow his vain or personal desires, i.e., to be objective.

After that the great scholar concludes with these words,

> "Though we know that there is no one on earth who can enjoy all these qualities yet we do assert that the best of people and the nearest of them to perfection must be sought (for this job)."[1]

Suits and Items of Proof and Evidence

A person may sue another claiming that he has a right to a certain thing that is with this other person.

The person who litigates is called "plaintiff" and the one against whom the legal action is taken is called "defendant".

The parties in a lawsuit may present items of proof and evidence to support their suit of defense, and these items may be witnesses and the like.

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[1] *Fathul-Bari*, 13/146.

The ways of authenticating a suit

A suit can be authenticated or confirmed through three ways: confession, bearing testimony, and taking oath.

Confession

If a person who is legally responsible (*mukallaf*) willingly confesses that he has done a certain thing, the judge must deliver his judgment in the case in question according to this confession. It has been narrated that the Prophet (PBUH) stoned Mâ`iz and Al-Ghâmidiyyah after their confessing the crime of adultery.[1]

Testimony

A suit can be authenticated and confirmed through the testimony of witnesses, and it is an individual obligation (*fard `ayn*) on the part of any person who is called for testimony. Almighty Allah says,

﴿وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا﴾

﴾*... And the witnesses should not refuse when they are called on (for evidence)...*﴿

(Qur'ân: 2: 282)

And the witness must say the truth even if it is against himself. Almighty Allah says,

﴿يَـا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنفُسِكُمْ﴾

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[1] Narrated by Muslim.

﴿*O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves...*﴾

(Qur'ân: 4: 135)

Also, he must not bear testimony without knowledge. Almighty Allah says,

﴿وَلاَ يَمْلِكُ الَّذِينَ يَدْعُونَ مِن دُونِهِ الشَّفَاعَةَ إِلاَّ مَن شَهِدَ بِالْحَقِّ وَهُمْ يَعْلَمُونَ﴾

﴿*... except those who bear witness to the truth...*﴾

(Qur'ân: 43: 86)

Important still, testimony is accepted only from those who are Muslim, mature, insane, and upright.

The quorum of testimony is defined according to the case in which testimony is sought and this itself is determined according to the right claimed.

Rights are of two sections: the rights of Allah and the rights of humans

The rights of humans are of three types:

1. A type in which two male witnesses are accepted, and it concerns things which have nothing to do with property such as marriage and divorce.
2. A type in which two men or a man and two women or one witness and the oath of the plaintiff are accepted, and it concerns things connected with property such as selling.
3. A type in which two men or one man and two women or four women are accepted as witnesses, and

it concerns things which are not seen by men in normal cases, such as suckling, child delivery, and internal defects of women.

The rights of Allah, however, do not stand for the testimony of women, as Az-Zuhrî says,

> "No person is to be flogged as a legal punishment except with the testimony of two men."

These rights are of three types:

1. A type in which not less than four men are accepted as witnesses, and it concerns *zinâ*. Almighty Allah says, ﴿*And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes...*﴾ (Qur'ân: 24: 4)

2. A type in which two men are accepted as witnesses, and it concerns things for which there are legal punishments other than *zinâ*, according to the aforementioned statement of Az-Zuhrî.

3. A type in which one man is accepted, and it concerns the seeing of Ramadân crescent.[1]

Taking oath

If the plaintiff fails to present any item of proof and the defendant denies the right in question, the plaintiff will have nothing in this regard except the oath taken by the defendant. The Prophet (PBUH) said,

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[1] For more details about the seeing of this crescent, you may review the section dealing with this topic in the part on "Fasting" in this book.

"The proof is to be presented by the plaintiff *and the oath is to be taken by the defendant."*[1]

Shar`î Rulings Related to Jurisdiction

In the following lines some of the most significant rulings pertaining to jurisdiction and judges will be listed in a nutshell, as follows:

- If a certain man in a certain place is the best to take the responsibility of judging between people, he must accept the job, and the ruler has the right to oblige him to accept it if he refuses it.

- The job of a judge is quite religiously serious and dangerous as to the magnitude of responsibility, for it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said, *"Whoever is appointed to judge between people will have been slaughtered without knife."*[2]

- A judge must not receive any bribes or even gifts or presents.

- A judge must not judge when he is angry.

- If a judge judges that a certain person is to be given something that he – the person – knows that it is not his, in this case he must not consider it to be lawful merely because the judge has said it is his, because a judge's verdict does not change the truth as to the legality or illegality of things.

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[1] Narrated by At-Tirmidhi.
[2] Narrated by Abû Dâwûd and others.

- The Prophet (PBUH) said that whoever swears falsely to take the property of a Muslim unlawfully, will meet Allah on the Day of Resurrection when He will be angry with him.[1]

- The Prophet (PBUH) said "*Whoever claims (that he has a right to a thing) which is not his, does not belong to us (i.e., to Muslims) and will occupy his seat in Hellfire.*"[2]

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[1] Narrated by Al-Bukhârí and Muslim.
[2] Narrated by Muslim and Ibn Mâjah.

Questions and Answers on Part Five

Q: What is the *shar`î* ruling concerning a Muslim who does not reveal the faults of another Muslim?

A: It is recommended that the Muslim conceals the faults committed by another Muslim as long as this does not help in inflicting any evil upon any Muslim. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> "... *and he who conceals (the faults) of a Muslim, Allah will conceal his faults in the world and in the Hereafter...*"[1]

And, Allah knows best.

Q: What is the *shar`î* ruling if a group of people kill one person?

A: If a group of people kill one person, all of them are to be executed. It has been narrated by Mâlik on the authority of Sa`îd Ibnul-Musayyab that `Umar Ibnul-Khattâb, may Allah be pleased with him, killed a group of people, five or seven, because they killed one man. `Umar said, "Even if the inhabitants of San`â' helped one another (in killing) him, I would kill them all."[2] And, Allah knows best.

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[1] Narrated by Muslim.

[2] Narrated by Al-Bayhaqî and others.

Q: What is the *shar`î* ruling concerning the legal punishment of *zinâ* on the part of slaves?

A: If a slave, male or female, commits *zinâ*, no stoning to death is to be applied to him or her. He or she is to be lashed with fifty lashes. Almighty Allah says,

﴿فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ﴾

﴿... *And after they have been taken in wedlock, if they commit illegal sexual intercourse, their punishment is half that for free (unmarried) women...*﴾

(Qur'ân: 4: 25)

Moreover, It has been narrated that `Umar, may Allah be pleased with him, applied the same ruling.[1]

It is also worth mentioning that it has been narrated on the authority of Abû Hurayrah and Zayd Ibn Khâlid that the Messenger of Allah (PBUH) was asked about the slave-girl, if she was a virgin and committed illegal sexual intercourse. The Prophet (PBUH) said,

"If she commits illegal sexual intercourse, lash her, and if she does it a second time, then lash her again, and if she repeats it for the third time, then sell her even for a hair rope."

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[1] See *Al-Irwâ'* 2345.

Ibn Shihâb said, "I do not know whether (he said) to sell her after the third or fourth offense."[1] And, Allah knows best.

Q: What is the *shar`î* ruling concerning a person who is coerced to commit *zinâ*?

A: Whoever commits *zinâ* under coercion is not to receive any legal punishment (*hadd*). It has been narrated that once thirst had consumed a woman when she passed by a shepherd. She asked him to give her (water) to drink yet he refused to do that unless she let him have access to her (sexually). She let him do that. The case was submitted to `Umar who then consulted with the (knowledgeable) people concerning stoning her. Thereupon `Alî, may Allah be pleased with him, said, "This woman was coerced. I judge that you should let her go," and `Umar did that.[2] And, Allah knows best.

Q: What is the *shar`î* ruling concerning a person who says that he has committed *zinâ* with a certain woman?

A: If a person confesses that he has committed *zinâ* with a certain woman, the legal punishment of *zinâ* is to be applied to him alone and not to her as well unless she confesses the crime too. It has been narrated on the authority of Abû Hurayrah and Zayd Ibn Khâlid that a Bedouin came and said, "O Messenger of Allah! Judge between us according to Allah's Laws." His opponent got up and said, "He is

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bayhaqî.

right. Judge between us according to Allah's Laws." The Bedouin said, "My son was a laborer working for this man, and he committed illegal sexual intercourse with his wife. The people told me that my son should be stoned to death; so, in lieu of that, I paid a ransom of one hundred sheep and a slave-girl to save my son. Then I asked the learned scholars who said, 'Your son is to be lashed one-hundred lashes and be exiled for one year.'" The Prophet (PBUH) said, "*No doubt I will judge between you according to Allah's Laws. The slave-girl and the sheep are to go back to you, and your son will get a hundred lashes and one year exile.*" He then addressed somebody, "*O Unays! Go to the wife of this (man) and stone her to death (if she confesses [according to another version]).*" So, Unays went and stoned her to death (after she confessed, also according to the other version).[1] And, Allah knows best.

Q: What is the *shar`î* ruling concerning discretionary punishment (*ta`zîr*) which is based on taking property?

A: According to Mâlik and Abû Yûsuf, it is permissible that the ruler (or the judge) punishes a person by taking his property or part of it. Ibnul-Qayyim said that the Prophet (PBUH) applied a discretionary punishment to the effect that he deprived a person of his share in the booty. It has also been narrated by Ahmad and others that the Prophet (PBUH) said concerning *Zakâh*,

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[1] This version and the other one containing the woman's confession have been narrated by Al-Bukhârî and Muslim.

> *"Whoever pays it seeking to receive a reward (from Allah) will receive its reward, and if any person withholds it, we shall surely take it (from him) in addition to half of his property..."*

And, Allah knows best.

Q: What is the *shar`î* ruling concerning a person who spoils the crop of another?

A: If a person, while irrigating his own crop, spoils the crop of another person because his irrigation is done more heavily than what is normally done, he is liable for this ruined crop. However, if water is poured from an unknown spot, he is not to be held responsible for that. In general, whenever a crop is drowned because of him, he is to guarantee that. And, Allah knows best.

Q: What is the *shar`î* ruling concerning a physician who causes harm to a person while medicating him?

A: There is no difference between scholars concerning the judgment that if a person who has no medical experience tries to medicate someone and causes harm to him, he is to be held responsible for that according to the harm he has caused. It has been narrated that the Prophet (PBUH) said,

> *"If a person practices medication and no one knows that he has ever practiced it before, he is responsible (for any harm he may cause)."*[1]

And, Allah knows best.

[1] Narrated by Abû Dâwûd and others.

Q: Is the legal punishment of *khamr* drinking the only punishment in this regard?

A: A person who drinks *khamr* is to be lashed with forty lashes which can be increased up to eighty lashes as clarified in the section dealing with legal punishments in general (in this book). In addition to this punishment, the Prophet (PBUH) is reported to have said a number of *h̲adîth*s concerning *khamr* and drunkenness, including the following:

- *"A habitual khamr drunkard will not enter Paradise."*[1]
- *"Allah has cursed khamr, the one who drinks it, the one who serves it, the one who sells it, the one who buys it, the one who wrings it, the one for whom it is wrung, the one who carries it, and the one to whom it is carried."*[2]
- *"khamr is the mother (i.e., source) of evil things. So whoever drinks it his prayer will not be accepted for forty days, and if he dies while it is in his abdomen, he will die (as stray) as (the people of the pre-Islamic period of) ignorance."*[3] And, Allah knows best.

Q: Is it permissible to invoke Allah against a person who drinks *khamr*?

A: This is not permissible. It has been narrated on the authority of `Umar, may Allah be pleased with him, that during the lifetime of the Prophet (PBUH) there was a man called `Abdullâh whose nickname

[1] Narrated by Ibn Mâjah.
[2] Narrated by Abû Dâwûd and others.
[3] Narrated by At-Tabarânî.

was "*ḥimâr* (donkey)," and he used to make the Messenger of Allah (PBUH) smile. The Prophet (PBUH) lashed him because of drinking (*khamr*). And one day he was brought to the Prophet (PBUH) on the same charge and was lashed. On that, a man among the people said, "O Allah! Curse him! How frequently he has been brought (to the Prophet on such a charge)!" The Prophet (PBUH) said, "*Do not curse him, for by Allah, I know for he loves Allah and His Messenger.*"[1] It has also been narrated on the authority of Abû Hurayrah, who said,

> "A drunkard was brought to the Prophet (PBUH) and he ordered that he be beaten (lashed). Some of us beat him with their hands, some with their shoes, and some with their garments (twisted in the form of a lash). When that drunk had left, a man said, 'What is wrong with him? May Allah disgrace him!' The Messenger of Allah (PBUH) said, '*Do not help Satan against your (Muslim) brother.*'"[2]

And, Allah knows best.

Q: What is the *shar`î* ruling concerning a person's seeking to be a ruler or a judge?

A: It has been narrated that `Abdur-Raḥmân Ibn Samurah, may Allah be pleased with him, said,

> "The Prophet (PBUH) said (to me), '*O `Abdur-Raḥmân! Do not seek to be a ruler, for if you are given authority on your*

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bukhârî and Abû Dâwûd.

demand then you will be held responsible for it, but if you are given it without asking (for it), then you will be helped (by Allah) in it...'"[1]

Seeking to be a judge is similar to seeking to be ruler. And, Allah knows best.

Q: What is the *shar`î* ruling concerning a person who judges between people while feeling angry?

A: It is not for a person to judge between people while he is in any angry mood. It has been narrated that `Abdur-Rahmân Ibn Abû Bakrah said,

> "Abû Bakrah wrote to his son who was in Sijistan, 'Do not judge between two persons when you are angry, for I heard the Prophet (PBUH) saying, '*A judge should not judge between two persons while he is in an angry mood.*'"[2]

And, Allah knows best.

Q: Does a judge's verdict change the truth as to the legality or illegality of things.

A: A judge's verdict does not change the truth as to the legality or illegality of things. It has been narrated that Umm Salamah, the wife of the Prophet (PBUH), said that once the Messenger of Allah (PBUH) heard the clamor of some contenders at the door of his apartment. He went to them and said,

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Al-Bukhârî, Muslim, and others.

"I am a human being and the claimants bring to me (the dispute) and one of them may be more eloquent than the others. Thus I may judge him to be on the right and decide in his favor. So If I, by my judgment, give someone (the undue share) out of the right of a Muslim, I will be giving him a portion of Fire. Therefore, he may burden himself with it or *abandon it."*[1]

And, Allah knows best.

Q: What is the *shar`i* ruling concerning a person who judges between people while he is not qualified to do so?

A: Scholars have stated that it is not permissible for a person to judge between people as long as he is not qualified for that. They also assert that if such a person judges between people, he will be sinful and his judgment is not to be effective whether it is in conformity with the truth or not, because such conformity with the truth will come accidentally and not according to a well-established verdict which has been given on the basis of some *shar`i* origin. And, Allah knows best.

Q: In what exactly should a judge equal between two contenders?

A: He should treat them equally in five things: in letting them enter upon him, in letting them sit before him, in receiving them, in listening to them,

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[1] Narrated by Muslim and others.

and finally in judging between them concerning the case in question. And, Allah knows best.

Q: What is the *shar`î* ruling concerning the testimony of a blind man?

A: According to Mâlik and A<u>h</u>mad, it is permissible for a blind person to bear testimony concerning a case in which he testifies for something he "heard" as long as he can identify the voice in question. Thus his testimony is permissible in cases related to marriage, divorce, trade, endowment, confession, and the like, whether he witnessed the case in question when he was blind or when he was endowed with eyesight then became blind thereafter. Ibnul-Qâsim said,

> "I said to Mâlik, '(What about the case in which) a man hears his neighbor divorcing his wife from behind a wall (without being able to see him)? (Can) he testify to that (divorce) as he identified the voice?' Mâlik replied, 'His testimony is permissible (i.e., effective)'"

The Shâfi`îs say that a blind person's testimony is permissible only in certain things including lineage and death.

Finally, Abû <u>H</u>anîfah asserts that a blind person's testimony is not acceptable in principle. And, Allah knows best.

Part six

Dealings and Transactions

Business Transactions

The Legality of Business Transactions

Originally, business transactions have been legalized by the *Sharî`ah* as long as they are undertaken according to its instructions. In other words, everything can be sold and bought as long as this is done according to the consent of the seller and the buyer and as long as the *Sharî`ah* does not forbid the item in question. Almighty Allah says,

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

﴿*... Allah has permitted trading and forbidden Ribâ (usury)...*﴾

(Qur'ân: 2: 275)

He also says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلاَّ أَن تَكُونَ تِجَارَةً عَن تَرَاضٍ مِّنكُمْ﴾

﴿*O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent...*﴾

(Qur'ân: 4: 29)

And, it has been narrated on the authority of Hakîm Ibn Hizâm, may Allah be pleased with him, that the Prophet (PBUH) said,

"The buyer and the seller have the option of canceling or confirming the deal unless they separate."[1]

In another version narrated on the authority of Ibn `Umar, may Allah be pleased with him, the Prophet (PBUH) said,

"The seller and the buyer have the option of canceling or confirming the deal unless they separate, and if they speak the truth and make clear the defects of the goods, then their bargain will be blessed for them, and if they tell lies and hide some facts, their bargain will be deprived of (Allah's) blessings."[2]

Moreover, Muslim scholars have unanimously agreed as to the permissibility of trading. This is because man needs such transactions which are based on exchange of benefits, and the legality of these transactions secures a legal way for undertaking the relevant interests without harm.[3]

That is why Allah bestows mercy on those who undertake this kind of dealing, i.e., selling and buying, in a tolerant way. It has been narrated on the authority of Jâbir Ibn `Abdullâh, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Al-Bukhârî and others.
[3] See *Fathul-Bari*, 4/287.

"Allah shows mercy to (any) man who is tolerant when he sells, (or) buys, (or) demands (his dues)."[1]

Also, faithful and trustworthy traders will be granted a very special position in the Hereafter due to their faithfulness and truthfulness. It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Prophet (PBUH) said,

"A Muslim, trustworthy, and truthful trader will be with martyrs on the Day of Resurrection."[2]

Dignity of Work

Business transactions represent a very large sector of dealings and a very common way of earning livelihood. That is why it is quite significant to stress the dignity of work in passing this.

Some people may regard certain kinds of work or professions as contemptible. Yet, the Prophet (PBUH) denied the validity of this notion and taught his Companions, may Allah be pleased with them, that a human being's dignity as a whole is tied up with his work no matter what kind of work it is as long as it is lawful. The Prophet (PBUH) also taught them that real disgrace and humiliation are in depending on other people's help especially when one is able to independently undertake one's affairs. He (PBUH) said,

"It is better that a person takes a rope and bring a bundle of wood on his back to sell so

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Ibn Mâjah and others.

that Allah may preserve his honor, than that he begs from people, (regardless of) whether they give to him or refuse (to give anything to) him."[1]

The Muslim can earn his livelihood through farming, trade, or industry or through any profession or employment as long as it does not involve doing, supporting, or propagating anything prohibited.

One may make the general rule that any transaction in which one person's gain results in another's loss is unlawful, while any transaction which is fair and beneficial to all the parties concerned and which is transacted by mutual consent is lawful.

Forbidden Forms of Trade

It has been clarified earlier that everything is lawful to sell as long as this is undertaken according to the consent of the seller and the buyer and as long as the item in question or the form of selling is not forbidden by the *Sharî`ah*.

The forbidden forms of trade will be listed as follows:

Business monopoly

As monopoly means concentration of supply in one hand, it leads to exploitation of the consumers and the workers, and it has, therefore, been declared unlawful by the Prophet (PBUH). Huge trusts, cartels,

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[1] Narrated by Al-Bukhârî and Muslim.

and monopolies should not exist in Islamic society. The monopoly-dominated economic order betrays lack of harmony between private and social good and is, thus, a negation of the principle of maximum social advantage which the Islamic society sets out to achieve.

Speculative business based on selfish interest

Speculation means buying something cheap in bulk at a time and selling it at a high price at another and, thus, controlling the market to achieve personal gains. A close observation will reveal that speculators are primarily interested in private gains regardless of the larger interest of society. These speculators try to create artificial scarcity of goods and commodities and thereby create an inflationary pressure on the economy. As the poor masses have to pay for this, Islam has condemned such speculative business.

Interest transactions

All transactions involving interest are forbidden in Islam. Some people find it hard to submit to the injunction prohibiting interest, because they think interest and profit earned in trade are similar. Trade involves risk of loss, and also in its case, it is not only the capital invested that brings profit which is equally the result of initiative, enterprise, and efficiency of the entrepreneur. Hence its rate cannot be predetermined and fixed. Moreover, trade is productive. A person reaps benefit after undergoing labor and hardship. It generates full employment and economic growth.

Rightly, therefore, has Islam strictly prohibited all transactions based on interest or involving it in some form or another.

Transactions similar (in nature) to gambling

The Arabic equivalent to gambling is *maysir* which literarily means "gaining something too easily" and "gaining a profit without working for it". The literal meaning of the term explains the principle on account of which gambling is prohibited in Islam. Any monetary gain which comes too easily, so much so that one does not have to work for it, is unlawful.

The principle on which the objection to gambling is based is that you gain what you have not earned, or lose by mere chance. Dice, lottery, prize bonds, and horse race betting are to be held within the definition of gambling.

Munâbadhah and *Mulâmasah*

Islam recognizes barter trade subject to the injunctions of the Qur'ân and the *Sunnah,* and it has prohibited all forms of transactions which admit of fraud in the least degree. It has impressed on traders that defective and worthless goods should not be given in exchange for good ones, and if there is a defect in the goods sold it must be pointed out and made manifest to the purchaser. Besides issuing the instructions which govern all forms of trade, including barter trade, Islam has banned two forms of sale contract that were prevalent before Islam: *munâbadhah* and *mulâmasah.*

Munâbadhah means that the seller should throw the cloth to the buyer before he has carefully examined it. The very act of throwing the cloth will mean that the bargain has been struck. *Mulâmasah* means touching the cloth without examining it, i.e., the buyer was just supposed to touch the cloth to strike the bargain. Both these forms of transaction were prohibited because in either case the purchaser could not carefully examine the things sold to him, and the bargain was likely to prove unduly disadvantageous to one side.

The Prophet (PBUH) forbade these two forms of trade as narrated by Muslim on the authority of Abû Hurayrah, may Allah be pleased with him.

Muzâbanah

It is the exchange of fresh fruits for dry ones in a way that the quantity of the dry fruits is actually measured and fixed, but the quantity of the fresh fruits to be given in exchange is guessed while it is still on the trees. The Prophet (PBUH) forbade this exchange because the quantity of the fruit on the trees cannot be definitely determined and the transaction is just a leap into the dark.

The Prophet (PBUH) forbade such a form of trade as narrated by Muslim and others on the authority of Abû Hurayrah, may Allah be pleased with him.

Mu`âwamah

It consists in selling the fruit on the trees in one, two, or three years even before it has made its appearance. It is prohibited because like *muzâbanah*

it is also a leap into the dark. Such transactions may result in bitterness and frustration. It has been narrated by Abû Dâwûd on the authority of Jâbir Ibn `Abdullâh, may Allah be pleased with him, that the Prophet (PBUH) forbade *mu`âwamah*.

Gharar (Aleatory Trade)

This includes every form of trade that includes unawareness and risk. In other words, it is to sell a thing which one does not have in one's possession, nor expects to bring it under one's control, e. g., fish in the river, or birds in the air. Possession is one of the basic conditions of a sale. A person cannot sell a thing which is not in his possession. It has been narrated that Abû Hurayrah, may Allah be pleased with him, said,

> "The Messenger of Allah (PBUH) forbade sale by means of pebbles[1] and the *gharar* trade."[2]

Bay`ul-hasâh (Sale by means of pebbles)

In his commentaries on *Sahîh Muslim* (10/156), *Imâm* An-Nawawî says that there are three interpretations for what is meant by the pebble trade or *bay`ul-hasâh*:

- The purchaser tells the seller that when he will throw a pebble on his goods, the sale contract will be confirmed for such and such a price.

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[1] This kind of sale will be explained right after the current forbidden form of trade.

[2] Narrated by Muslim and others.

- The seller tells the purchaser that on whatever thing a pebble thrown by him falls will be sold to him.
- The seller tells the purchaser that he has the right to cancel the trade he has transacted with him only until he throws his pebble.

Sale contract is a serious matter and it should not be accomplished by such hit-and-miss methods like throwing pebbles on goods. A sale completed in this way may lead to injustice and hardship to one side. That is why the Prophet (PBUH) forbade this form of trade, as quoted above.

Bay`ul-Mudtar (Trade conducted by force)

It is to buy something forcibly or to purchase something when its owner is compelled under stress of want to dispose it of. Instead of purchasing the thing in question, and taking undue advantage of the seller's helplessness, one should help him.

Sale over the sale of another

When one person has sold goods to another, a third person should not upset the bargain trying to sell his own goods to the latter, offering them at lower rates or pointing out the defect in the goods already sold to him by the former. The Prophet (PBUH) said,

> *"A Muslim should not purchase in opposition to his (Muslim) brother..."*[1]

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[1] Narrated by Al-Bukhârî and Muslim.

Things Which Are Not to Be Sold

There are certain things that the Muslim is not allowed to trade in, as follows:

1. *Khamr*

It has been narrated that on the authority of `Â'ishah, may Allah be pleased with her, that when the verses of the chapter of Al-Baqarah (concerning *khamr*) were revealed, the Prophet (PBUH) declared that trading in *khamr* had been prohibited.[1]

2. Carcass, swine, and idols

It has been narrated on the authority of Jâbir Ibn `Abdullâh, may Allah be pleased with him, that he heard the Prophet (PBUH) saying when he was in Mecca in the year of its conquest,

> *"Verily Allah and His Messenger have forbidden the sale of khamr, carcass, swine, and idols."*

It was said, "O Messenger of Allah! You see that the fat of the carcass is used for coating boats and varnishing hides and people use it for lighting purposes," whereupon he said, *"No, it is forbidden."* Then the Messenger of Allah (PBUH) said,

> *"May Allah the Exalted and Majestic destroy the Jews; when Allah forbade the use of fat of the carcass for them, they melted it, and then sold it and made use of the price (received from it)."*[2]

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Al-Bukhârî, Muslim, and others.

3. Dogs

It has been narrated on the authority of Abû Mas`ûd Al-Ansârî, may Allah be pleased with him, that the Prophet (PBUH) forbade the utilization of the price of a dog, the earnings of a prostitute, and the earnings of a fortuneteller.[1]

4. Statues and other similar things related to creatures having souls

Islam prohibits the acquisition of statues and even more strongly the making of them. Al-Bukhârî has narrated on the authority of Sa`îd Ibn Abul-Hasan that the latter said,

> "I was with Ibn `Abbâs when a man came and said to him, 'O father of `Abbâs! I earn my living with my own hands, and I make these figures.' Ibn `Abbâs said, 'I shall tell you only what I heard from the Messenger of Allah (PBUH). I heard him say, *'Allah will punish anyone who makes figures until he breathes spirit into them, which he can never do.'* Seeing the man extremely upset, Ibn `Abbâs said, 'What does ail you? If you must make figures, then make them of trees or something which has no soul.'"

And the same obviously applies to the making of idols and the like.[2]

In his *Al-Halâlu wal-Harâmu fil-Islâm* (The Lawful and the Prohibited in Islam), *Shaykh* Yûsuf Al-Qaradâwî says that drawing, painting, and

[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Al-Bukhârî, Muslim, and others.

photography are either permitted or at worst disapproved, depending on what comes closest to the spirit of the Islamic legislation. He adds that their subject matter should not be sexually provocative, as, for example, the erotic parts of the female body or a man and woman in a state of intimacy, and should not be of someone sacred or respected, such as angels or prophets.[1]

5. Unripe fruit and unripe corn

It has been narrated on the authority of Anas, may Allah be pleased with him, that the Prophet (PBUH) forbade the sale of grapes before they become dark and that of the corn before it ripens. Similarly, he has forbidden the sale of raw dates. The fruit of the date palms should not be sold until it becomes red or yellow.[2]

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[1] See *Al-Halâlu wal-Harâmu fil-Islâm,* chapter two, the section dealing with "In the Home".

[2] Narrations in this regard have been recorded by Al-Bukhârî, Muslim, and others.

Khiyâr (Choices in Business Dealings)

Divisions of *Khiyâr*

There are three divisions of *khiyâr*, as follows:

Khiyârul-Majlis (The *khiyâr* connected to the transaction place)

This *khiyâr* is established on the part of the two contractors in question from the time they contract the transaction until they separate (physically), unless they agree that there is no *khiyâr*, or cancel it after the contraction, or one of them cancels it thus canceling his own right (to *khiyâr*) yet not the right of the other contractor.

It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"If two men conclude a transaction, each one of them has the choice (whether to go ahead with the deal or to cancel it) as long as they have not separated (from the transaction place), or until one of them gives the other the choice (to do so). So, if one of them gives the other (that) choice and they conclude the transaction accordingly, (conducting) the trade becomes binding; and if they separate (physically) after concluding the transaction*

and neither of them has cancelled the trade, (conducting) the trade becomes binding (as well)."[1]

In another narration, the Prophet (PBUH) concluded,

"... and it is not permissible for one of them to part from his companion (at the transaction place before making the final agreement) because he may want to cancel the deal."[2]

Khiyârush-Shart (The *khiyâr* based on a condition)

This division of *khiyâr* is that the seller or the buyer or both of them set a condition that *khiyâr* – i.e., the right to confirm or cancel the transaction in question – is effective during a specific period, and this *khiyâr* is valid even if this period should be long.

It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

"The seller and the buyer has the right to cancel or confirm their bargain as long as they have not separated (from the transaction place) or when the trade is optional."[3]

Khiyârul-`Ayb (The *khiyâr* caused by defects)

This division of *khiyâr* means that if a man buys a defective commodity yet he does not discover this

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Abû Dâwûd and others.
[3] Narrated by Al-Bukhârî, Muslim, and An-Nasâ'î.

defect except after he and the seller separate the transaction place, he has the right to return the commodity to the seller.

It has been narrated by Al-Bukhârî and Abû Dâwûd on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Do not keep camels and sheep not milked for a long time, for whoever buys such an animal has the option to milk it and then either to keep it or return it to the owner along with one ṣâ` of dates."*

Al-Bukhârî added that some narrated from Ibn Sîrîn (that the Prophet said concerning the same thing),

> *"... one ṣâ` of wheat, and he has the option for three days."*

It has also been narrated by Al-Bukhârî and others on the authority of Ibn Mas`ûd, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Whoever buys a sheep which has not been milked for a long time, has the option of returning it along with one ṣâ` of dates."*

Salam (Payment in Advance)

Definition and Legality

Salam is terminologically defined as selling something whose price is paid in advance and it is to be delivered later.

Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنتُم بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ﴾

﴾*O you who believe! When you contract a debt for a fixed period, write it down...*﴿

(Qur'ân: 2: 282)

And it has been narrated that Ibn `Abbâs, may Allah be pleased with him, said,

> "I testify that debt, which is guaranteed for a fixed period, has been made lawful and permitted by Allah in His Book."

Then Ibn `Abbâs recited the above-quoted verse.[1]

It has moreover been narrated also on the authority of Ibn `Abbâs, who said,

> "The Prophet (PBUH) came to Medina and (i.e., when) the people were used to paying in advance the price of dates to be delivered within two or three years. He said (to them), '*Whoever pays in advance the price of*

[1] See *Al-Irwâ'*, 1369.

something to be delivered later should pay it for a specified measure at specified weight for a specified period.'"[1]

Applying *Salam* to Something Not Possessed

It is not stipulated that the person who is to deliver the thing which has been bought through *salam* has this thing in his possession at the time of the deal.

It has been narrated that Muhammad Ibn Abul-Mujâlid said,

> "`Abdullâh Ibn Shaddâd and Abû Burdah sent me to `Abdullâh Ibn Abû `Awfâ and told me to ask `Abdullâh whether the people in the lifetime of the Prophet (PBUH) used to pay in advance for wheat (to be delivered later). `Abdullâh replied, 'We used to pay in advance to the peasants of Ash-Shâm for wheat, barley, and olive oil of a known specified measure to be delivered in a specified period.' I asked (him), 'Was the price paid (in advance) to those who had the things to be delivered later?' `Abdullâh replied, 'We were not used to asking them about that.' Then they sent me to `Abdur-Rahmân Ibn Abzâ and I asked him (about the same thing). He replied, 'The Companions of the Prophet (PBUH) used to practice *salam* in the lifetime of the Prophet (PBUH); and we were not used to asking them whether they had standing crops or not.'"[2]

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Al-Bukhârî and others.

Sharikah (Partnership)

Definition and Legality

Partnership is a legal contract entered into by two or more persons in which each willingly agrees to furnish a part of the capital and labor for a business enterprise, and by which each shares a fixed proportion of profits and losses.

Almighty Allah says,

﴿وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَى بَعْضٍ إِلاَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ﴾

﴿And, verily, many partners oppress one another, except those who believe and do righteous good deeds, and they are few...﴾
(Qur'ân: 38:24)

Partnership can also take place – in the meaning of sharing – without purpose or agreement as in inheritance. Almighty Allah says,

﴿وَإِن كَانَ رَجُلٌ يُورَثُ كَلاَلَةً أَو امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِن كَانُوا أَكْثَرَ مِن ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ﴾

﴿If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a

*sister, each one of the two gets a sixth; but if more than two, they **share** in a third...*﴾

(Qur'ân: 4: 12)

And, it has been narrated that As-Sâ'ib said to the Prophet (PBUH),

> "You were my partner during the pre-Islamic period of ignorance, and you were the best partner..."[1]

The Legal Partnership

A legal partnership exists when there is consent between two or more people who agree that each of them will pay a specified amount of his property whereby they seek to have profits on condition that each of them will receive from these profits what is tantamount to what he has paid and that he will share with the others – also according to his proportion – in the expenses and the like. Such partnership is permissible as long as there is consent no matter whether the share of one of the partners is too small and the share of another one is very big. This is because it is like a form of trading which is undertaken on a basis of consent, tolerance, and good-heartedness.[2]

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[1] Narrated by Ibn Mâjah.

[2] See *As-Saylul-Jarrâr*, 3/246-248.

Mudârabah (Sharing Venture)

Definition

Mudârabah here is not what is known in Arabic as "*mudârabah*" which means "engagement in risky business transactions on the chance of quick or considerable profit, or a commercial or financial transaction involving speculation". In Islam *mudârabah* is a kind of sharing venture which is taken from the Qur'ânic word "*yadribûn* (translated as "traveling") in the following verse,

﴿وَآخَرُونَ يَضْرِبُونَ فِي الأَرْضِ يَبْتَغُونَ مِن فَضْلِ اللَّهِ﴾

﴾*... others travelling through the land, seeking of Allah's Bounty...*﴿

(Qur'ân: 73: 20)

Thus, it is one of the means through which the Muslim "seeks of Allah's Bounty".

Mudârabah, which is also called *qirâd*, is a contract which is conducted between two persons who agree that one of them will pay to the other a sum of money in cash in order to trade therein and the profits will result from this are to be shared between the two according to the proportions upon which they both agree.

Legality

In his *Al-Ijmâ`* (124), Ibnul-Mundhir has stated that they (scholars) unanimously agree that it is

permissible to undertake *qirâd* with *dînârs* and *dirhams*, and that the person who is to trade in this money has the right to stipulate conditions on its owner that he will take a third of the profits, or a half of them, or whatever they may agree on, as long as this is defined.

The Companions of the Prophet (PBUH) applied this *mudârabah* or *qirâd*. It has been narrated on the authority of Zayd Ibn Aslam on the authority of his father that `Abdullâh and `Ubaydullâh, the two sons of `Umar Ibnul-Khattâb took money from Abû Mûsâ Al-Ash`arî, who was then the ruler of Basra, to trade in it then deliver it to their father, the Commander of the Believers, after taking the profit for themselves. Abû Mûsâ wrote to `Umar to take the money from them, yet when the two sons reached Medina `Umar insisted to take the money and the profits because – he said – the ruler gave them the money to trade in only because they were sons of the Caliph. His son `Ubaydullâh said that he should not do that, and a man from those who were sitting with `Umar suggested that `Umar might regard that as *qirâd*. `Umar considered it as such and so he took the money (the capital) and half of the profits and `Abdullâh and his son took the other half.[1]

When the Laborer Violates the Agreement

Mudârabah is permissible whether it is applied with certain restrictions or without such restrictions, and the laborer – i.e., the person who receives the

[1] The narration has been abridged. See *Al-Irwâ'*, 5/291.

money to trade in – is not liable for the money unless he transgresses or violates the conditions agreed upon. Ibnul-Mundhir said,

> "They (scholars) have agreed that if the owner of the money forbids the laborer to sell on credit, i.e., sale based on delay of payment, and the laborer does otherwise, he is to be held liable for the money.[1]"

To this effect it has been narrated that Hakîm Ibn Hizâm, a Companion of the Prophet (PBUH), used to set certain conditions when giving his money to a person in *mudârabah* and tell him that if he violated those conditions he would be liable for the money.[2]

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[1] *Al-Ijmâ'*, 125.
[2] Narrated by Al-Bayhaqî and others.

Ijârah (A Contract for Hire or Lease)

Definition and Legality

Ijârah can be defined as a contract granting use or occupation of an item of property during a specified period in exchange for a specified rent. This also applies to hiring someone for doing a certain job for specified wages.

Ijârah is mentioned in the Qur'ân and the *Sunnah*. Almighty Allah says,

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ﴾

﴿*... Then if they give suck to the children for you, give them their due payment...*﴾

(Qur'ân: 65: 6)

﴿قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ﴾

﴿*And said one of them (the two women): 'O my father! Hire him! Verily, the best of men for you to hire is the strong, the trustworthy.*﴾

(Qur'ân: 28:26)

﴿فَوَجَدَا فِيهَا جِدَاراً يُرِيدُ أَن يَنقَضَّ فَأَقَامَهُ قَالَ لَوْ شِئْتَ لَاتَّخَذْتَ عَلَيْهِ أَجْراً﴾

﴾*... Then they found therein a wall about to collapse and he (Khidr) set it up straight. (Mûsâ [Moses]) said, 'If you had wished, surely, you could have taken wages for it!'*﴿
(Qur'ân: 18: 77)

And, it has been narrated that `Â'ishah, may Allah be pleased with her, said,

"The Messenger of Allah (PBUH) and Abû Bakr hired a man from the tribe of Banud-Dîl as an expert guide who was a pagan (follower of the religion of the pagans of Quraysh). The Prophet (PBUH) and Abû Bakr gave him their two riding camels and took a promise from him to bring their riding camels in the morning of the third day to the Cave of Thawr."[1]

In What Is *Ijârah* Permissible?

Ijârah can be applied to every thing which can be used with the remaining of its `*ayn* (object, substance), i.e., the thing used should not disappear as a result of *ijârah*. To illustrate this, a man can use an apartment for a specified time and this is included in *ijârah* but he cannot make use of a small quantity of water in a utensil by drinking them and call this *ijârah*.

Thus, every thing which can be used with the remaining of its `*ayn* can be hired or leased as long as this is not forbidden due to some *shar`î* reason.

[1] Narrated by Al-Bukhârî.

Also, the rented object must be known, i.e., defined, and so must be the remuneration which is to be paid, the period of rent, and the kind of work or use for which this thing is rented or hired. Almighty Allah says in the story of Prophet Mûsâ with the father of the two women,

﴿قَالَ إِنِّي أُرِيدُ أَنْ أُنكِحَكَ إِحْدَى ابْنَتَيَّ هَاتَيْنِ عَلَى أَن تَأْجُرَنِي ثَمَانِيَ حِجَجٍ فَإِنْ أَتْمَمْتَ عَشْرًا فَمِنْ عِندِكَ﴾

﴿He said (To Mûsâ): 'I intend to wed one of these two daughters of mine to you, on condition that you serve me for eight years, but if you complete ten years, it will be (a favour) from you...﴾

(Qur'ân: 28: 27)

When Is It Impermissible to Take Wages

Almighty Allah says,

﴿وَلَا تُكْرِهُوا فَتَيَاتِكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا لِّتَبْتَغُوا عَرَضَ الْحَيَاةِ الدُّنْيَا وَمَن يُكْرِههُّنَّ فَإِنَّ اللَّهَ مِن بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَّحِيمٌ﴾

﴿... And force not your maids to prostitution, if they desire chastity, in order that you may make a gain in the (perishable) goods of this worldly life. But if anyone compels them (to prostitution), then after such compulsion,

Allah is Oft-Forgiving, Most Merciful (to those women)[1].﴾

(Qur'ân: 24: 33)

According to this verse, it is not permissible that any person take wages for prostitution. Also, the Prophet (PBUH) forbade this, as it has been narrated on the authority of Abû Mas`ûd Al-Anṣârî, may Allah be pleased with him, that the Prophet (PBUH) forbade the utilization of the price of a dog, the earnings of a prostitute, and the earnings of a fortuneteller.[2]

Furthermore, it has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Prophet (PBUH) forbade taking a price for animal copulation.

Generally speaking, it is not lawful for the Muslim to take wages or the like for doing anything unlawful. This applies, for example, to things such as bringing drugs, a prostitute, belly-dancer, or anything of the kind to someone, for this is a form of helping others to commit sins. Therefore, since this is prohibited in principle, it is also forbidden to take wages for doing it.

Rulings concerning Payment of Wages

A person who hires another to do some job for him must give him his dues. The Prophet (PBUH) said, as

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[1] i.e. He will forgive them because they have been forced to do this evil action unwillingly.

[2] Narrated by Al-Bukhârî, Muslim, and others.

narrated on the authority of Ibn `Umar, may Allah be pleased with him,

> *"Give the wageworker his wages before his sweat dries."*[1]

And still, he (PBUH) warned those who might not give those wages to employees. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Allah says, 'I will be against three persons on the Day of Resurrection: (i) one who makes a covenant in My Name, but he proves treacherous, (ii) one who sells a free person (as a slave) and eats the price, and (iii) one who employs a laborer and gets the full work done by him but does not pay him his wages.'"*[2]

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[1] *Al-Irwâ'*, 1498.

[2] Narrated by Al-Bukhârî.

Loaning and Loans

Excellence and Seriousness

Just as Islam encourages the Muslim to help his Muslim brothers and sisters who may need his financial help by lending them what they need as long as he can do so, it firmly urges him to be free from debt when he dies and warns him against doing otherwise.

It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"He who alleviates one of the sufferings of worldly life for a (Muslim) brother, Allah will alleviate for him one of the sufferings of the Day of Resurrection, and he who finds relief for one who is hard pressed, Allah will make things easy for him in the Hereafter, and he who conceals (the faults) of a Muslim, Allah will conceal his faults in worldly life and in the Hereafter. Allah is at the back of a servant (of His) so long as (this) servant is at the back of his (Muslim) brother..."*[1]

To the same effect, it has been narrated on the authority of Ibn Mas`ûd, may Allah be pleased with him, that the Prophet (PBUH) said,

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[1] Narrated by Muslim and others.

> *"Whenever a Muslim lends another Muslim twice, that will surely be (counted) as a charity of the same amount (of the money lent) once."*[1]

Still, it has been narrated on the authority of Thawbân, the *mawlâ* of the Messenger of Allah (PBUH), that he (PBUH) said,

> *"He whose soul departs (his) body when he is free from three (things), will enter Paradise: from arrogance, ghulûl (taking illegally a part of booty), and debt."*[2]

Another *hadîth*, which has been narrated on the authority of Abû Qatâdah, reads that once the Messenger of Allah (PBUH) stood up among them (his Companions) to deliver a sermon in which he told them that *jihâd* in the cause of Allah and belief in Allah (with all His Attributes) are the most meritorious of acts. A man stood up and said, "O Messenger of Allah! Do you think that if I am killed in the cause of Allah, my sins will be blotted out from me?" The Messenger of Allah (PBUH) said, *"Yes, in case you are killed in the cause of Allah and you were patient and sincere and you always fought facing the enemy, never turning your back upon him."* Then he added, "What have you said (now)? (Wishing to have further assurance from him for his satisfaction), he asked (again), "Do you think that if I am killed in the way of Allah, all my sins will be obliterated from me?" The Messenger of Allah (PBUH) said, *"Yes, if you*

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[1] Narrated by Ibn Mâjah.

[2] Narrated by Ibn Mâjah and At-Tirmidhî.

were patient and sincere and always fought facing the enemy and never turning your back upon him, (all your lapses will be forgiven) except debt. Jibrîl (Gabriel) has told me this."[1]

It is because all of this that the Prophet (PBUH) disliked the Muslim's being in debt because debt is a worry by night and a cause of humiliation by daytime. He used to ask Allah's protection from indebtedness, saying,

> *"O Allah, I seek refuge with You against the burden of debt and against being overcome by men."*[2]

He also once said, *"I seek refuge with You against unbelief and debt."* A man asked him, "Do you equate debt with unbelief?" He (PBUH) replied, *"Yes."*[3]

Paying a Debt Back

It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Whoever takes people's property with the intention of repaying it, Allah will repay it on his behalf (i.e., will help him repay it), and whoever takes it in order to spoil it, then Allah will spoil him."*[4]

This means that the Muslim should be keen on paying his debts back and never think of spoiling any

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[1] Narrated by Muslim and others.
[2] Narrated by Abû Dâwûd.
[3] Narrated by An-Nasâ'î and Al-Hâkim.
[4] Narrated by Al-Bukhârî.

money he may have borrowed from people. This is what Islam ordains, as Almighty Allah says,

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا وَإِذَا حَكَمْتُم بَيْنَ النَّاسِ أَن تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُم بِهِ إِنَّ اللَّهَ كَانَ سَمِيعاً بَصِيراً﴾

﴿*Verily! Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All-Hearer, All-Seer.*﴾

(Qur'ân: 4: 58)

Debts are to be demanded in a good way

Whenever the Muslim demands his due debts back, he should do that in a good way as tolerance is a characteristic of Islam and Muslims. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) owed somebody a camel of a certain age. When he came to demand it back, the Prophet (PBUH) said (to some people), "*Give him (his due).*" When the people searched for a camel of that age, they found none, but found a camel one year older. The Prophet (PBUH) said, "*Give (it to) him.*" On that, the man remarked, "You have given me my right in full. May Allah give you in full!" The Prophet (PBUH) said,

"*The best amongst you are those who pay the rights of others in a good way.*"[1]

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[1] Narrated by Al-Bukhârî, Muslim, and others.

Giving respite to those who are insolvent

If an indebted person is insolvent and thus does not have money to pay his debt back, the creditor is recommended to give him time until he becomes able to repay. Almighty Allah says,

﴿وَإِن كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ وَأَن تَصَدَّقُوا خَيْرٌ لَّكُمْ إِن كُنتُمْ تَعْلَمُونَ﴾

﴾*And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay, but if you remit it by way of charity, that is better for you if you did but know.*﴿

(Qur'ân: 2: 280)

Besides, it has been narrated on the authority of Abul-Yusr, a Companion of the Prophet (PBUH), that he (PBUH) said,

"*Let him whoever loves that Allah shades him in His Shade either grant an insolvent person time (until he is able to repay) or remit his (debt).*"[1]

And, it has been narrated on the authority of Ayyûb that Abû Qatâdah, may Allah be pleased with him, demanded (the payment of his debt) from his debtor but he disappeared; later on he found him and he said, "I am hard up financially," whereupon he said, "(Do you state it) by Allah?" He said, "By Allah, (it is true)." Upon this Qatâdah said,

[1] Narrated by Ibn Mâjah.

"I heard the Prophet (PBUH) as saying, '*He who loves that Allah saves him from the torments of the Day of Resurrection should give respite to the insolvent or remit (his debt).*'"[1]

Delay of payment

As clarified above, the payment of debt can be delayed especially when the indebted person is insolvent, but no delay should be made by a rich person because this is a sign of injustice. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> "*Delay (in the payment of debt) on the part of a rich man is injustice...*"[2]

Loans and Usury

A loan may cause a person to fall into the abyss of *ribâ* or usury and this takes place when the loan is connected to interest as in banks which adopt interest-based loaning.[3] The general rule in this regard states: Whenever a loan brings about a (usurious) interest, then this is *ribâ*.

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[1] Narrated by Muslim.

[2] Narrated by Al-Bukhârî and Muslim.

[3] More light will soon be shed on this point in the section dealing with *ribâ*.

Ribâ (Usury)

In Islam, *ribâ* (commonly known as usury or interest) is simply an excessive or illegally high rate of interest charged on borrowed money. *Ribâ* is also included in the taking of a superior thing of the same kind of goods and giving more of the same kind of goods of inferior quality, e.g., dates of superior quality for dates of inferior quality in greater amount.

Islam strictly forbids all forms of *ribâ*, and this is confirmed by the Qur'ân, the *Sunnah*, and consensus of scholars.

Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُم مُّؤْمِنِينَ ۞ فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ وَإِن تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ﴾

﴿*O you who believe! Be afraid of Allah and give up what remains (due to you) from Ribâ (usury) (from now onward), if you are (really) believers. And if you do not do it, then take a notice of war from Allah and His Messenger but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums).*﴾

(Qur'ân: 2: 278-279)

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

﴾*... Allah has permitted trading and forbidden Ribâ (usury)...*﴿

(Qur'ân: 2: 275)

It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

"Avoid the seven great destructive sins."

The people inquired, "O Messenger of Allah! What are they?" He said,

"To join others in worship along with Allah, to practice sorcery, to kill a life which Allah has forbidden except for a just cause, (according to Islamic law), to consume ribâ (usury), to deplete an orphan's wealth, to give back to the enemy and flee from the battlefield at the time of fighting, and to accuse chaste women, who never even think of anything touching chastity and are good believers."[1]

Moreover, it has been narrated that the Prophet (PBUH) said,

"Allah has cursed the one who takes interest (ribâ), the one who pays it, the two persons who witness the deed, and the one who writes the contract."[2]

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[1] Narrated by Al-Bukhâri and Muslim.
[2] Narrated by Ahmad and others.

Why *Ribâ* Is Prohibited

In his *Al-Halâlu wal-Harâmu fil-Islâm* Al-Qaradâwî says that Islam strictly prohibits *ribâ* because it is deeply concerned for the moral, social, and economic welfare of mankind. Muslim scholars have given sound arguments, explaining the wisdom of this prohibition, and recent studies have confirmed their opinion, with some additions and extensions of their arguments.

Then Al-Qaradâwî quotes what *Imâm* Ar-Râzî said in his *Tafsîr* of the Qur'ân in this regard, as follows,

> "**First,** *ribâ* requires the taking of interest appropriating another person's property without giving him anything in exchange, because the one who lends one *dirham* for two *dirhams* gets the extra *dirham* in exchange of nothing. Now, a man's property is for (the purpose of) fulfilling his needs and it has great sanctity, according to the *hadîth*, '*A man's property is as sacred as his blood.*'[1] This means that taking it from him without giving him anything in exchange is prohibited.
>
> **Second,** dependence on interest prevents people from working to earn money, since the person with *dirhams* can earn an extra *dirham* through interest, whether at once or at a later date, without working for it. The value of work will consequently be reduced

[1] Narrated by Abû Nu'aym.

in his estimation, and he will not bother himself to take the trouble of running a business or risking his money in trade or industry. This will lead to depriving people of benefits…

Third, permitting the taking of interest discourages people from doing good to one another as required by Islam. If interest is prohibited in a society, people will lend to each other with good will, expecting back no more than what they have loaned, while if interest is made permissible the needy person will be required to pay back more on loans (than what he has borrowed), and this will weaken his feelings of good will and friendliness toward the lender.

Fourth, the lender is very likely to be wealthier and the borrower poorer. If interest is allowed, the rich will exploit the poor, and this is against the spirit of mercy and charity."[1]

After that Al-Qaradâwî says that in a society where interest is lawful, the strong people benefit from the suffering of the weak. As a result, the rich become richer and the poor poorer, creating socio-economic classes in the society separated by wide gulfs. Naturally this generates envy and hatred among the poor toward the rich, and contempt and callousness among the rich toward the poor. Conflicts arise, the socio-economic fabric is rent, revolutions are born, and social order is threatened.

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[1] Ar-Râzî, *Tafsir*, 7/4.

Then Al-Qaradâwî concludes this part with the words: "Recent history amply illustrates the dangers to the peace and stability of nations inherent in interest-based economies."[1]

Divisions of *Ribâ*

Ribâ is divided into two sections:

1. *Ribâ an-Nasâ'ah*, or interest on lent money. This is the interest that the lender stipulates that the borrower must pay in return of the delay of payment. This kind of *ribâ* is prohibited according to the Qur'ân, the *Sunnah*, and the consensus of Muslim scholars.

2. *Ribâ al-Fadl*, or interest based on superiority, and it is the taking of a superior thing of the same kind of goods and giving more of the same kind of goods of inferior quality, e.g., dates of superior quality for dates of inferior quality in greater amount. This kind of *ribâ* is prohibited as well according to the *Sunnah* and consensus of scholars.

The Categories Where *Ribâ* Is Prohibited

Ribâ takes place in any of the following categories: **gold, silver, wheat, barley, dates, and salt**.

It has been narrated by Muslim on the authority of `Ubâdah Ibnus-Sâmit, may Allah be pleased with him, that he heard the Prophet (PBUH) forbidding the sale of gold by gold, and silver by silver, and

[1] See *Al-Halâlu wal-Harâmu fil-Islâm*, chapter four, the section dealing with "Transactions".

wheat by wheat, and barley by barley, and dates by dates, and salt by salt, except like for like and equal for equal.

Therefore, if any of these categories is to be sold by its equivalent, e.g., gold by gold, no increase is allowed and it must be like for like both in terms of kind and in terms of weight, irrespective of superiority and inferiority. Also, the payment must be done at the transaction place. It has been narrated on the authority of Abû Sa`îd Al-Khudrî, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Do not sell gold for gold unless equivalent in weight, and do not sell less amount for greater amount or vice versa; and do not sell silver for silver unless equivalent in weight, and do not sell less amount for greater amount or vice versa; and do not sell gold or silver that is not present at the moment of exchange for gold or silver that is present."*[1]

If any of these six categories is sold for a different category, e.g., gold for silver or wheat by barely, it is permissible yet the payment must be done at the transaction place. It has been narrated on the authority of `Ubâdah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"There is no harm in selling gold for silver if the silver is of the greater amount of the two, hand by hand and no nasî'ah*[2] *is allowed;*

[1] Narrated by Al-Bukhârî, Muslim, and others.

[2] As explained earlier, *nasî'ah* refers to the increase that the lender stipulates that the borrower must pay in return of the delay of payment.

nor (is there any harm) in selling wheat for barely if the barely is of the greater amount of the two, hand by hand and no nasî'ah is allowed (either)."[1]

If any of these categories is sold by another category that is different in kind and nature, e.g., gold for barley and silver by salt, it is permissible to apply *tafādul* (difference of superiority)[2] and *nasî'ah*. It has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that the Prophet (PBUH) purchased food grains from a Jew on credit and mortgaged his iron armor to him.[3]

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[1] Narrated by Abû Dâwûd and others.

[2] Revise *ribâ al-fadl* in "Divisions of *Ribâ*" above.

[3] Narrated by Al-Bukhârî, and see *Subus-Salâm*, 3/38. Also it is recommended that you review the section dealing with "Forbidden Forms of Trade" in this part of the book.

Muzâra`ah (Crop-sharing)

Definition and Legality

Muzâra`ah is terminologically defined as giving a piece of land to a person to cultivate it against half of what it will produce or the like of that.

It has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Messenger of Allah (PBUH) contracted with the people of Khaybar (the trees) on the condition that he would have half of the produce in fruits and harvest.[1]

The Expenses of Crop-sharing

There is no harm that the expenses be shouldered by the owner of the land which is to be cultivated in the way of *muzâra`ah* or by the person who is to cultivate it or by them both. Al-Bukhârî said,

> "`Umar contracted (certain) people that if he brought the seeds (required for cultivation) he would receive half (of the produce), and if they brought the seeds they would receive such and such (part of the produce, i.e., a part on which they would agree)."[2]

He also said Al-Hasan judged that: there is no harm that the piece of land is owned by one of them and

[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] See *Sahîhul-Bukhârî*, 5/10.

both of them pay of the expenses (of cultivating it), and its produce is to be divided among them (i.e., equally). Az-Zuhrî maintains the same.

The Prohibited Form of *Muzâra`ah*

The Prophet (PBUH) forbade his Companions, may Allah be pleased with them, to practice another form of crop-sharing which was quite common at that time. This is because such a transaction clearly involves great uncertainty and risk, and is contrary to the spirit of justice. It went that the landowner would give out his land conditional to his getting the produce of one part of it and the cultivator the produce of the remaining part or perhaps half, or to the owner's getting a specified weight or measure of the grain produced and the cultivator the rest. But sometimes one part of the land produced a crop while the other did not, so that one of the two would receive nothing or very little, while the other would take everything or most of the produce. Similarly, if the total produce did not exceed the specified weight or measure, the owner would get everything while the cultivator would get nothing.

The Prophet (PBUH) saw that justice demands that both should share the total produce, whether this total is a great deal or little, according to the agreed-upon ratio. Proportions of the total produce must be specified so that if the crop is bountiful, it is bountiful for both, if it is meager it is meager for both, and still if nothing is produced neither of them receives anything. This is the fair distribution for both parties.

It has been narrated by Al-Bukhârî that that Râfi` Ibn Khadîj said,

> "We had the most agricultural land in Medina, and one of us would rent out his land, designating a part of it for himself. Sometimes a calamity would hit that part while the rest of the land would be safe, and sometimes the other way around. Consequently, the Prophet (PBUH) forbade us to do so."

It has moreover been narrated by Muslim that Râfi` Ibn Khadîj said,

> "The people used to lease land in the time of the Prophet (PBUH) in exchange for what they grew by the streamlets or at the borders of the fields, or for a fixed quantity of produce. Sometimes it would happen that the part so set aside was destroyed while the other was safe and sometimes the opposite would take place, and the people had no investments other than that. Hence the Prophet (PBUH) forbade this practice."

This obviously indicates that the Prophet (PBUH) was eager to establish perfect justice in his society – and the all in all society of Muslims as a whole entity – and to remove every source of conflict and discord from the community of the believers.

It has been narrated on the authority of Zayd Ibn Thâbit, may Allah be pleased with him, that two people came to the Prophet (PBUH) disputing about

some land, and he said, *"If this is what happens among you, then do not lease your farms."*[1]

The landowner and the cultivator must therefore be magnanimous and generous to each other; the landowner should not demand too high a share of the yield and the worker should take proper care of the land.

Finally, it has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that the Prophet (PBUH) did not forbid crop-sharing but advised the owner and the cultivator to be considerate of each other.[2]

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[1] Narrated by Abû Dâwûd.
[2] Narrated by At-Tirmidhî.

Musâqâh (Watering Trees for Part of the Crop)

Musâqâh is to give certain trees to a person to water and take care of them in exchange for part of the crop of these trees.

It has been quoted earlier that it has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Messenger of Allah (PBUH) contracted with the people of Khaybar (the trees) on the condition that he would have half of the produce in fruits and harvest.[1]

It has also been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Ansâr said to the Prophet (PBUH), "Distribute the date palm trees between us and our emigrant brothers (Muhâjirûn)." He (PBUH) said, "*No.*" The Ansâr said (to Emigrants), "Look after the trees (water and watch them) and share the fruits with us." The Emigrants said, "We listen and obey."[2]

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Al-Bukhârî and Muslim.

Ihyâ'ul-Mawât
(Cultivation of Barren Land)

Definition

Ihyâ'ul-Mawât is cultivating a barren land so that it can be fertile and productive. This kind of cultivation generally concerns such barren lands which have no known owners. Thus, if a barren piece of land is not known to have any owner, a person can water and watch it until it becomes fertile and this makes him its owner.[1]

Islam Encourages It

Islam encourages Muslims to cultivate barren lands. It has been narrated by Al-Bukhârî on the authority of `Â'ishah, may Allah be pleased with her, that the Messenger of Allah (PBUH) said,

> *"He who cultivates a land that does not belong to anybody is more rightful (to own it)."*

After that Al-Bukhârî says, "`Urwah said that `Umar gave the same verdict during his Caliphate."

There are other *hadîths* giving the same meaning and judgment.

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[1] See *Fathul-Bâri*, 5/18.

Rahn (Mortgaging)

Definition and Legality

Rahn is putting up collateral connected to a debt so that it can be used for taking one's due in full if the indebted person cannot pay the debt back.[1]

Almighty Allah says right after the verse of debt (Qur'ân: 2: 282),

﴿وَإِن كُنتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ﴾

﴿*And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging)...*﴾

(Qur'ân: 2: 283)

Interestingly enough, connecting this to traveling in the verse is interpreted as being something that commonly takes place during journeys, yet a relevant *hadîth* indicates that mortgaging is also permissible in residence (as the opposite of "on a journey").

It has been narrated on the authority of `Â'ishah, may Allah be pleased with her, that the Prophet (PBUH) purchased food grains from a Jew on credit and mortgaged his iron armor to him.[2]

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[1] See *Fathul-Bârî*, 5/140.
[2] Narrated by Al-Bukhârî.

Can the Mortgagee Benefit from the Mortgaged Thing?

It is not permissible for the mortgagee to benefit from the mortgaged thing because of the general rule stating that whenever a loan brings about interest this becomes a form of *ribâ*.

However, if the mortgaged thing is a thing that can be taken as a mount or if it can be milked, the mortgagee can mount or milk it if he spends on it. It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"A person can ride the mortgaged animal because of what he spends on it, and he can drink the milk of a milch animal as long as it is mortgaged."*

According to another narration the Prophet (PBUH) added,

> *"... and the one who rides (the animal) and drinks (its milk) is to spend on it."*[1]

When Does Mortgaging Become Ineffective?

Mortgaging becomes ineffective once the mortgaged thing is returned to the mortgagor according to the mortgagee's will.

[1] Narrated by Al-Bukhârî, Abû Dâwûd, and At-Tirmidhî.

Wadî`ah (Trusts Deposited for Safekeeping)

Definition

Wadî`ah can be defined as a trust that a person deposits with another person to keep it for him.

The *Shar`î* Ruling concerning *Wadî`ah*

Whenever a man entrusts his Muslim brother with something to keep it form him, it is desirable that he accepts that as long as he knows that he is able to keep it well, because this is a form of cooperation in righteousness a piety that Islam encourages. Also, the entrusted person must give the entrusted thing back when he is asked to do so. This is because Almighty Allah says,

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا﴾

> ﴿*Verily! Allah commands that you should render back the trusts to those, to whom they are due...*﴾

(Qur'ân: 4: 58)

It is also because the Prophet (PBUH) said,

> *"Give back trusts to those who have entrusted you (with them)..."*[1]

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[1] Narrated by At-Tirmidhî and Abû Dâwûd.

Guaranteeing Trusts

There is no liability on the part of the entrusted person concerning the entrusted thing except when he is responsible for ruining or losing it.

It has been narrated that the Prophet (PBUH) said,

> *"Whoever is trusted with a trust, there is no guarantee on him."*[1]

It has also been narrated on the authority of Anas Ibn Mâlik, may Allah be pleased with him, that `Umar, may Allah be pleased with him, made him guarantee a trust that was stolen from among his property.[2] Al-Bayhaqî commented on this saying, "Perhaps he neglected safekeeping it, so he was made to guarantee it because of that negligence."

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[1] Narrated by Ibn Mâjah.
[2] Narrated by Al-Bayhaqî.

H̲awâlah (Transferring the Right to Collect a Debt)

Definition and Legality

H̲awâlah is transferring the right to collect a debt from one person to another. This happens when the troubled person transfers this right to another person from whom the creditor can get his money back.

Islam allows *h̲awâlah* because it is something that people need to do to solve some problems that may result as regards payment of debts. Thus, if "A" is indebted to "B" yet "C" is indebted – at the same time – to "A", the *Sharî`ah* allows "A" to make "B" collect his money from "C" who is indebted to "A". "B" must accept the transfer of the right to collect the debt in question if "C" is well-to-do. This is because that the Prophet (PBUH) said,

> *"Delay (in the payment of debt) on the part of a rich man is injustice. So, if any one of you is transferred to a well-to-do person (to collect his debt from him), he should accept the transfer."*[1]

[1] Narrated by Ibn Mâjah.

The Conditions of the Validity of *Hawâlah*

1. The acceptance of the person who transfers the right to collect a debt ("A") and the person to whom this right is transferred ("B") is a must as far as the validity of this transfer is concerned, yet the acceptance of the person from whom this debt is to be collected ("C") may not be stipulated here because of the *hadîth* mentioned above. This is because majority of scholars maintain that the command mentioned in the *hadîth* is meant for desirability "*istihbâb*" and not obligation.

2. The two rights – i.e., the debt on "A" and the debt on "C" – must be equal in terms of type, amount, time of payment, delay, and quality. Thus, *hawâlah* will not be valid if a gold-based debt is transferred to be collected as silver, nor will it be valid if the transferred debt is to be paid immediately and the other debt is delayed or vice versa. Also, *hawâlah* will not be valid if the two rights are different in terms of superiority and inferiority.

3. The debt must be stable, in the meaning that if the right to collect a debt is transferred to an employee who has not received his salary yet, that *hawâlah* will not be valid.

4. Both rights must be known and defined.

The Consequence of *Hawâlah*

Once *hawâlah* is applied in a valid way, the person who has transferred the right to collect the debt in

question to another person becomes free from liability as regards this debt. Therefore, if the person from whom the debt is to be collected becomes bankrupt or dies, the person who has made the *hawâlah* is not to be held responsible for the debt because of that. This is according to the view adopted by the majority of scholars. And, Allah knows best.

`Âriyah
(Something Lent for Use)

Definition

`Âriyah is something whose owner allows others to use without receiving any remuneration for that.

The *Shar`î* Ruling concerning It

It is legally desirable to give something to others to use as *`âriyah*. Almighty Allah says,

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى﴾

﴾... Help you one another in Al-Birr and At-Taqwâ (virtue, righteousness and piety)...﴿
(Qur'ân: 5: 2)

Also Almighty Allah has dispraised those who

﴿الَّذِينَ هُمْ عَن صَلَاتِهِمْ سَاهُونَ ۝ الَّذِينَ هُمْ يُرَاءُونَ ۝ وَيَمْنَعُونَ الْمَاعُونَ﴾

﴾Who delay their prayers from their stated fixed times, those who do good deeds only to be seen (of men), and refuse Al-Mâ`ûn (small kindnesses e.g. salt, sugar, water, etc.).﴿
(Qur'ân: 107: 5-7)

Moreover, it has been narrated that the Prophet (PBUH) said,

"... and Allah is at the back of a servant (of His) so long as (this) servant is at the back of his (Muslim) brother..."[1]

Giving It Back

Whenever a person gives something to another person to use as *`âriyah*, the latter must give it back to him after making use of it. This is because it is a trust and Almighty Allah says,

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا﴾

﴿*Verily! Allah commands that you should render back the trusts to those, to whom they are due...*﴾

(Qur'ân: 4: 58)

Guaranteeing It

As clarified above, when a person borrows something to use for some time he becomes "entrusted" with the thing in question, and thus there is no guarantee on his part except in case of negligence. It has been narrated that the Prophet (PBUH) said, *"Whoever is trusted with a trust, there is no guarantee on him."*[2]

Also, a person who receives a *`âriyah* is to guarantee it if the person who gives it to him stipulates that he should guarantee it. It has been narrated on the authority of Safwân Ibn Ya`lâ on the authority of his father who said,

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[1] Narrated by Muslim and others.
[2] Narrated by Ibn Mâjah.

> "The Messenger of Allah (PBUH) said to me, '*When my messengers come to you give them thirty shields and thirty camels.*' I said, 'O Messenger of Allah! Will that be a guaranteed *`âriyah* or a delivered *`âriyah*?' He said, '*A delivered (`âriyah).*'"[1]

Commenting on this *hadîth*, Al-Amîr As-San`ânî said,

> "Guaranteed *`âriyah* is *`âriyah* whose value is to be guaranteed if it is ruined, whereas delivered *`âriyah* is that which is to be delivered back (to its owner) if its object is still whole, and if it is ruined its value is not to be guaranteed."??

He added,

> "The *hadîth* supports the view that *`âriyah* is not to be guaranteed except when guarantee is stipulated, and this is the most evident view."[2]

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[1] Narrated by Abû Dâwûd.
[2] See *Subulus-Salâm*, 3/69.

Luqaṯah (Findings)

Definition

Luqaṯah refers to every kind of property which has been lost by someone and is prone to losing and forfeiture and whose owner is unknown.

What to Do with a Finding

Whenever a person finds any kind of property, he must identify its type and number then make an upright person testify to that then keep it and make a public announcement about it for one year. After that, if a person tells him of a distinctive sign that proves his being its owner, he is to give it to him, even if this happens after the passing of one year; otherwise he can make use of it.

It has been narrated that Suwayd Ibn Ghafalah said,

> "While I was in the company of Salmân Ibn Rabî`ah and S̱ûẖân, in one of the battles (of Islam), I found a whip. One of them told me to drop it but I refused to do so and said that I would give it to its owner if I found him, otherwise I would make use of it. On our return we performed *Ḫajj* and on passing by Medina, I asked Ubayy Ibn Ka`b about it. He said, 'I found a bag containing a hundred *dînâr*s in the lifetime of the

> Prophet (PBUH) and took it to the Prophet who said to me, '*Make a public announcement about it for one year.*' So, I announced it for one year and went to the Prophet who said, '*Announce it publicly for another year.*' So, I announced it for another year then went to him again and he said, '*Announce it for another year.*' So I announced it for still another year then went to the Prophet (PBUH) for the fourth time, and he said, '*Remember the amount of the money, the description of its container, and the string it is tied with, and if the owner comes, give it to him; otherwise make use of it.*'"[1]

It has also been narrated that the Messenger of Allah (PBUH) said,

> "*Whoever finds a luqaṯah should make one or two upright persons testify (to its finding), and he must neither change nor conceal it. Then, if its owner comes, he is the worthiest to have it, otherwise it (should be known that) it is Allah's property that He gives to whomever He wills.*"[2]

When Something Eatable or Trivial Is Found

Whoever finds an eatable thing in his way, can eat it; and whoever finds a trivial thing which no one would yearn to have, can take it and utilize it. It has been narrated on the authority of Anas Ibn Mâlik,

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Ibn Mâjah and Abû Dâwûd.

may Allah be pleased with him, that the Prophet (PBUH) passed by a (palm) date on his way, and he said, "*Were I not afraid that it could be of the charity (goods), I would have eaten it.*"[1]

Finding Something in the H̲aram (the Sacred Precincts)

Any *luqaṯah* which is found in the H̲aram can be picked up only for making a public announcement of it forever, and it is not permissible for anyone to possess it after the passing of one year as normally done with items of *luqaṯah* found elsewhere. It has been narrated on the authority of Ibn `Abbâs, may Allah be pleased with him, that the Prophet (PBUH) said on the day of the conquest of Mecca,

> "*Allah has made this town (Mecca) a sanctuary since the day He created the heavens and the earth. So, it is a sanctuary by Allah's Decree until the Day of Resurrection. Fighting in it was not legal for anyone before me, and it was made legal for me only for an hour by daytime. So, it (i.e., Mecca) is a sanctuary by Allah's Decree until the Day of Resurrection. Its thorny bushes must not be cut, its game must not be chased (i.e., hunted), and its fallen property (i.e., luqaṯah) must not be picked up except by a person who will announce it publicly...*"[2]

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[1] Narrated by Al-Bukhârî, Muslim, and Abû Dâwûd.
[2] Narrated by Al-Bukhârî.

Laqîṯ (Foundling)

Definition

Laqîṯ is a child who is under the age of puberty and who is found astray in a street (or any similar place) and whose lineage is not known.

The *Shar`î* Ruling concerning Picking Him up

Picking such a child up is a collective obligation or *farḏ kifâyah*, and it is one of the forms of cooperation in righteousness. Almighty Allah says,

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى﴾

﴾*... Help you one another in Al-Birr and At-Taqwâ (virtue, righteousness and piety)...*﴿
(Qur'ân: 5: 2)

If there is any money with him, it is to be spent on him, otherwise his spending is to be on the public treasury.[1]

The Inheritance of a Foundling

If a foundling dies and leaves inheritance yet no heirs, his inheritance is to be taken by the public treasury. The same ruling applies to his *diyah* (blood

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[1] See *Al-Irwâ'*, 1573.

money) if he is killed and a *diyah* is to be paid for that.

Ascribing Him to Some Lineage

If a person, male or female, claims that a certain foundling belongs to his or her family, he is to be ascribed to the lineage of this person as long as this attribution is possible.

If two or more people claim that he belongs to them, the foundling is to be ascribed to the person who presents proof that supports his claim.

Shuf`ah (Preemption)

Definition

Shuf`ah or preemption can be simply defined as the right to purchase something before others.

In What Is *Shuf`ah* Applied?

It has been narrated on the authority of Jâbir Ibn `Abdullâh, may Allah be pleased with him, that the Prophet (PBUH) gave a verdict regarding *shuf`ah* in every undivided joint thing (property), but if the limits are defined (or demarcated) or the ways and streets are fixed, then there is no preemption.[1]

Therefore, whoever has a partner in a land, a garden, a house, or anything of the kind, should not sell his share until he lets his partner know that he wants to sell it. If he sells it before informing his partner, the latter is worthier of the purchased object. It has been narrated also on the authority of Jâbir, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

> *"Whoever has date-palm trees or land, should not sell that until he offers (the would-be bought thing) to his partner."*[2]

It has moreover been narrated that `Amr Ibnush-Sharîd said,

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[1] Narrated by Al-Bukhârî and others.
[2] Narrated by Ibn Mâjah and An-Nasâ'î.

"Al-Miswar Ibn Makhramah came and put his hand on my shoulder and I accompanied him to Sa`d. Abû Râfi` said to Al-Miswar, 'Will you not order this (i.e. Sa`d) to buy my house which is in my yard?' Sa`d said, 'I will not offer more than four hundred (*dînâr*s or *dirham*s) in installments over a fixed period.' Abû Râfi` said, 'I was offered five hundred (*dînâr*s or *dirham*s) cash but I refused. Had I not heard the Prophet (PBUH) saying, '*A neighbor is more entitled to receive the care of his neighbor*,' I would not have sold it to you.'"[1]

[1] Narrated by Al-Bukhârî.

Hibah (*Gifts and Presents*)

Definition

Hibah is that a person puts another in possession of something that he owns without remuneration.

Islam Encourages *Hibah*

Islam encourages *hibah* and warns Muslims against depreciating things that they may receive as gifts or presents. It has been narrated that the Prophet (PBUH) said,

> *"Exchange presents (and gifts) so that you may love one another."*[1]

He (PBUH) also said,

> *"O Muslim women! None of you should look down upon the gift sent by her she-neighbor even if it is the trotters of a sheep (fleshless part of legs)."*[2]

Moreover, the Prophet (PBUH) said, as narrated on the authority of Abû Hurayrah,

> *"Even if I should be invited to a meal of a sheep's trotter, I will accept the invitation, and even if I should be given an arm or a*

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[1] Narrated by Al-Bayhaqî.
[2] Narrated by Al-Bukhârî and Muslim.

trotter of a sheep as a present, I will accept the present."[1]

Rewarding for *Hibah*

It is recommended that when a person receives something as a present or a gift, he may reward the person who has given it to him in any suitable way by giving him something in return. It has been narrated that `Â'ishah, may Allah be pleased with her, said,

> "The Messenger of Allah (PBUH) used to accept presents and used to give something in return."[2]

Who Is Worthier of *Hibah*?

It has been narrated that `Â'ishah, may Allah be pleased with her, said,

> "I said, 'O Messenger of Allah! I have two neighbors; which of them should I give a gift to?' The Prophet (PBUH) said, *'(Give) to the one whose door is nearer to you.'*"[3]

It has moreover been narrated on the authority of Kurayb, the *mawlâ* of Ibn `Abbâs, that Maymûnah Bintul-Hârith (the Prophet's wife) told him that she manumitted a slave-girl without taking the permission of the Prophet (PBUH). On the day when it was her turn to be with the Prophet (PBUH), she said, "Do you know, O Messenger of Allah, that I have manumitted my slave-girl?" He said, "*Have you really*

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[1] Narrated by Al-Bukhârî.
[2] Narrated by Al-Bukhârî and others.
[3] Narrated by Al-Bukhârî and Abû Dâwûd.

done that?" She replied in the affirmative and he (PBUH) said, *"You would have got more reward if you had given her (i.e., the slave-girl) to one of your maternal uncles."*[1]

These narrations indicate that one's relatives and neighbors are worthier of one's gifts and presents, especially when they are in need of these gifts and presents. And, Allah knows best.

No Preference among One's Children

The Muslim should not give preference to one of his children over another when he gives them gifts. It has been narrated that `Âmir said,

> "I heard An-Nu`mân Ibn Bashîr saying on the pulpit, 'My father gave me a gift but `Amrah Bint Rawahah (my mother) said that she would not agree to it unless he made the Messenger of Allah a witness to it. So, my father went to the Messenger of Allah (PBUH) and said, 'I have given a gift to my son from `Amrah Bint Rawahah, but she told me to make you a witness to it, O Messenger of Allah!' The Messenger of Allah (PBUH) asked, *'Have you given (the like of it) to everyone of your sons?'* He replied in the negative so the Messenger of Allah (PBUH) said, *'Be afraid of Allah, and be just to your children.'* My father then returned and took back his gift.'"[2]

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[1] Narrated by Al-Bukhârî, Muslim, and Abû Dâwûd.
[2] Narrated by Al-Bukhârî, Muslim, and Abû Dâwûd.

No Gifts Are to Be Given to State Officials

A State official here refers to any person who has been appointed by the State to be in charge of a certain job, such as ministers, managers, etc. No employee of the kind is to receive a gift or a present because it may be given to him as a bribe. Were he not appointed in the position in question, he would not – in most cases – be given such gifts.

It has been narrated on the authority of Abû Humayd As-Sâ`idî, who said,

> "The Messenger of Allah (PBUH) appointed a man called Ibnul-Lutbiyyah from the Asad tribe in charge of *sadaqah* (i.e., he was authorized to receive items of charity and *Zakâh* from the people on behalf of the State). When he returned (with the collections), he said, 'This is for you and (this is mine as) it was presented to me as a gift.' The Messenger of Allah (PBUH) stood on the pulpit and praised Allah and extolled Him then said, '*What about a State official whom I give an assignment and who (comes and) says, 'This is for you and this has been presented to me as a gift'? Why did he not remain in the house of his father or the house of his mother so that he could observe whether gifts would be presented to him or not? By Him in Whose Hand the life of Muhammad is, any one of you will not take anything from it (i.e., from that kind of gift) but will bring it on the Day of Judgment, carrying on his neck a camel that will be*

growling, or a cow that will be bellowing, or an ewe that will be bleating.' After that he raised his hands until we could see the whiteness of his armpits, then he said twice, *'O Allah! I have conveyed (the commandments).'"*[1]

[1] Narrated by Al-Bukhârî, Muslim, and Abû Dâwûd.

Waqf (Endowments)

Definition and Legality

Waqf can be defined as keeping some property and spending what comes out of it – in the form of profits and the like – in the cause of Allah.[1]

Allah has legislated *waqf* and made it a means through which His servants can draw near to Him. Almighty Allah says,

﴿لَن تَنَالُوا الْبِرَّ حَتَّى تُنفِقُوا مِمَّا تُحِبُّونَ﴾

> ﴿*By no means shall you attain righteousness unless You spend (in charity) of that which you love...*﴾

(Qur'ân: 3: 92)

There is something interesting concerning this verse. It has been narrated that Anas Ibn Mâlik, may Allah be pleased with him, said,

> "Abû Talhah had more property of date-palm trees gardens than any other amongst the Ansâr in Medina and the most beloved of them to him was Bayruhâ' garden, and it was in front of the Mosque of the Prophet (PBUH). The Messenger of Allah (PBUH)

[1] This is similar to the definition of the English word "endowment," as it refers to funds or property donated to an institution, an individual, or a group as a source of income.

used to go there and used to drink (from) its nice water."

Anas added,

"When this verse was revealed, ﴾*By no means shall you attain righteousness unless You spend (in charity) of that which you love...*﴿ (Qur'ân: 3: 92) Abû Talhah said to the Messenger of Allah, 'O Messenger of Allah! Almighty Allah says, ﴾*By no means shall you attain righteousness, unless you spend (in charity) of that which you love...*﴿ and no doubt, Bayruhâ' garden is the most beloved of all my property to me. So I want to give it in charity in Allah's cause. I expect its reward from Allah. O Messenger of Allah! Spend it where Allah makes you think it is feasible.' On that the Messenger of Allah said, '*Well done! It is useful property! I have heard what you have said (O Abû Talhah), and I think it would be proper if you gave it to your kith and kin.*' Abû Talhah said, 'I will do so, O Messenger of Allah!' Then Abû Talhah distributed that garden amongst his relatives and his cousins."[1]

It has moreover been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

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[1] Narrated by Al-Bukhârî, Muslim, and At-Tirmidhî.

"When a man dies, his acts come to an end, but three: recurring charity, or knowledge (from which people) benefit, or a pious son, who prays for him (the deceased person)."[1]

Waqf is included in the "recurring charity" motioned in this *hadîth*, and some scholars say that it refers to *waqf* in principle.

And still, it has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

"If somebody keeps a horse in Allah's cause motivated by his faith in Allah and his belief in His promise (of reward), then he will be rewarded on the Day of Resurrection for what the horse has eaten or drunk and (even) for its dung and urine."[2]

There are other verses and *hadîths* which motivate Muslims to spend in Allah's cause and which give promises of great and special rewards.

Types of *Waqf*

There are two types of *waqf*:

1. Family-oriented endowment, and this is the endowment which is specified for one's relatives.

2. Charitable endowment, and this is the endowment which is specified for any of the various forms of charity spending as well as spending in the cause of Allah in general.

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[1] Narrated by Muslim and others.

[2] Narrated by Al-Bukhârî and Ahamd.

How Is an Endowment Established?

An endowment is established, i.e., as an endowment that has been specified for the cause of Allah, when two things happen:

1. That an act which indicates this endowment is done, such as constructing a mosque and pronouncing the prayer call (*adhân*) in it.

2. That a statement which indicates it is uttered. This can be **explicit**, as when the person who endows says that he has specified such and such an item of property as endowment in the cause of Allah. The statement indicating *waqf* can also be **implicit**, as when the person who endows says for example, "I have given this in charity," while intending that he has given it as endowment.

It is also permissible, according to *Imâm* Ahmad, that a person conditions his endowment by his death, as when he says, "I have specified my house to be an endowment after my death". This is because such conditioning is similar to what is done when a person bequeaths personal property.

What Is to Be Endowed and What Is Not

Generally speaking, it is valid to endow every thing which can be lawfully sold and purchased and from which people can benefit with the existence of its object, unlike things whose objects or substances cannot exist except for short times such as food, drinks, and the like.

*Gha*s*b*
(Taking Property Wrongfully)

Definition

*Gha*s*b* can be defined as taking the right of a person without having any right to do so, i.e., illegally.

The *Shar`î* Ruling concerning *Gha*s*b*

*Gha*s*b* is an act of injustice, and all forms of injustice have been prohibited. Almighty Allah says,

﴿وَلاَ تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ﴾

﴿*And eat up not one another's property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.)...*﴾

(Qur'ân: 2: 188)

﴿وَلاَ تَحْسَبَنَّ اللّهَ غَافِلاً عَمَّا يَعْمَلُ الظَّالِمُونَ إِنَّمَا يُؤَخِّرُهُمْ لِيَوْمٍ تَشْخَصُ فِيهِ الأَبْصَارُ ۝ مُهْطِعِينَ مُقْنِعِي رُءُوسِهِمْ لاَ يَرْتَدُّ إِلَيْهِمْ طَرْفُهُمْ وَأَفْئِدَتُهُمْ هَوَاءٌ﴾

﴿*Consider not that Allah is unaware of that which the Zâlimûn (polytheists, wrong-doers, etc.) do, but He gives them respite up to a Day when the eyes will stare in horror. (They will be) hastening forward with necks outstretched, their heads raised up (towards*

the sky), their gaze returning not towards them and their hearts empty (from thinking because of extreme fear).﴾

(Qur'ân: 14: 42-43)

And it has been narrated that the Prophet (PBUH) said in the Farewell Sermon,

"Verily your blood and your property are as sacred and inviolable (among you) as the sacredness of this day of yours, in this month of yours, in this town of yours..."[1]

He also said, as narrated on the authority of Abû Hurayrah,

"A zânî (a person who commits zinâ [adultery or fornication]), at the time he is committing zinâ is not a believer; and a person, at the time of drinking an intoxicant, is not a believer; and a thief, at the time of stealing, is not a believer."

Ibn Shihâb said,

"`Abdul-Malik Ibn Abû Bakr Ibn `Abdur-Rahmân Ibnul- Hârith Ibn Hishâm told me that Abû Bakr used to narrate that narration to him on the authority of Abû Hurayrah, and he used to add that Abû Bakr used to mention, besides the above cases, *'And he who robs (illegally takes something by force) while the people are looking at him, is not a believer at the time he is robbing (that).'*"[2]

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[1] Narrated by Muslim.

[2] Narrated by Al-Bukhârî and Muslim.

Defending One's Property

It is permissible for a man to defend himself and his property if another man wants to kill him or takes his property unjustly. It has been narrated that Abû Hurayrah, may Allah be pleased with him, said,

> "A person came to the Messenger of Allah (PBUH) and said, 'O Messenger of Allah! What do you think if a man comes to me in order to confiscate my property?' He (PBUH) said, '*Do not surrender your property to him.*' He (the inquirer) said, 'What if he fights me?' He (PBUH) remarked, '*Then fight (with him).*' He (the inquirer) again said, 'What do you think if I am killed?' He (PBUH) observed, '*You will be a martyr.*' He (the inquirer) said, 'What do you think if I kill him?' He (PBUH) said, '*He will be in (i.e., go to) the Fire.*'"[1]

Benefiting from a Thing Taken Illegally

Just as it is prohibited to take something wrongfully, it is also prohibited that the person who takes this thing in this way benefits from it. Rather, he must return it to its owner. It has been narrated that the Prophet (PBUH) said,

> *"No one of you should take the personal property of his (Muslim) brother (without his will) whether he is serious or jesting; and*

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[1] Narrated by Muslim and An-Nasâ'î.

whoever takes (even) the stick of his brother must return it (to him)."[1]

It has also been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Messenger of Allah (PBUH) said,

"*Whoever has oppressed another person concerning his reputation or anything else, should beg him to forgive him before the Day of Resurrection when there will be no money (to compensate for wrong deeds); and if he has good deeds, those good deeds will be taken from him according to the oppression which he has committed; but if he has no good deeds, the sins of the oppressed person (or persons) will be loaded on him (also according to the oppression which he has committed).*"[2]

Taking Land Unlawfully

The Prophet (PBUH) firmly warned against taking lands unlawfully and promised that whoever does this will receive a painful punishment. It has been narrated that the Prophet (PBUH) said,

"*Whoever takes a piece of the land of another unjustly, will sink down the seven earths on the Day of Resurrection.*"[3]

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[1] Narrated by Abû Dâwûd and At-Tirmidhî.
[2] Narrated by Al-Bukhârî.
[3] Narrated by Al-Bukhârî and Muslim.

Still, whoever takes a piece of land unjustly and constructs some building on it or grows it, must uproot what he has grown and demolish what he has constructed. It has been narrated that the Prophet (PBUH) said,

> *"If a person grows (seeds) in a land of some people without their permission, he has no (right) to (take anything from) what has grown, yet is to take the expenses."*[1]

[1] Narrated by At-Tirmidhî and Ibn Mâjah.

Wakâlah (Authorization)

Definition and Legality

Wakâlah is that a person authorizes another to replace him and act as if he was him whether absolutely or under certain restrictions.

The legality of *wakâlah* is supported by the Qur'ân, the *Sunnah*, and consensus of scholars.

Almighty Allah says,

﴿وَكَذَٰلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ قَالَ قَائِلٌ مِّنْهُمْ كَمْ لَبِثْتُمْ قَالُوا لَبِثْنَا يَوْمًا أَوْ بَعْضَ يَوْمٍ قَالُوا رَبُّكُمْ أَعْلَمُ بِمَا لَبِثْتُمْ فَابْعَثُوا أَحَدَكُم بِوَرِقِكُمْ هَٰذِهِ إِلَى الْمَدِينَةِ فَلْيَنظُرْ أَيُّهَا أَزْكَىٰ طَعَامًا فَلْيَأْتِكُم بِرِزْقٍ مِّنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا﴾

﴾*Likewise, We awakened them (from their long deep sleep) that they might question one another. A speaker from among them said: 'How long have you stayed (here)?' They said: 'We have stayed (perhaps) a day or part of a day.' They said: 'Your Lord (Alone) knows best how long you have stayed (here). So send one of you with this silver coin of yours to the town, and let him find out which is the good lawful food, and bring some of that to you. And let him be careful and let no man know of you.'*﴿

(Qur'ân: 18: 19)

The part indicating *wakâlah* in this verse is ﴾*So send one of you with this silver coin of yours to the town, and let him find out which is the good lawful food, and bring some of that to you*﴿.

And it has been narrated that the Prophet (PBUH) would deputize some people in collecting debts and executing legal punishments. We have already quoted – in other sections of this book – texts that signify that. The following two examples may be quoted again:

- It has been narrated on the authority of Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) owed somebody a camel of a certain age. When he came to demand it back, the Prophet (PBUH) said (to some people), "*Give him (his due).*" When the people searched for a camel of that age, they found none, but found a camel one year older. The Prophet (PBUH) said, "*Give (it to) him.*" On that, the man remarked, "You have given me my right in full. May Allah give you in full!" The Prophet (PBUH) said, "*The best amongst you are those who pay the rights of others in a good way.*"[1]
- It has been narrated that he (PBUH) ordered a person called Unays Al-Aslamî to go to the woman of a man (in a case that had been submitted to him), and ordered him that if she confessed (adultery) he (Unays) was to

[1] Narrated by Al-Bukhârî, Muslim, and others.

stone her (to death). Unays did that and the woman confessed so he stoned her to death.[1]

In addition to this, Muslim scholars have unanimously agreed to the effect that *wakâlah* is legally permissible and desirable because it is a form of cooperation in righteousness and piety. It is also because not every person is able to undertake his affairs by himself and thus he may need another one to act on his behalf.

In What Can *Wakâlah* Be Applied?

As a general rule, every thing which a person can permissibly undertake by himself is permissible as to be undertaken by another person whom this person authorizes to act on his behalf concerning this thing.

Wakâlah and Truthfulness

A person who is authorized to act on behalf of another must be truthful and so he must be up to the responsibility which he has incurred as a result of this authorization. Therefore, as an authorized person is just like an entrusted person, he is not to guarantee the thing concerning which he has been deputized except in case of negligence. The Prophet (PBUH) said,

> *"There is no guarantee on the part of an entrusted person.*[2]*"*[1]

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] *Sahîhul-Jâmi'is-Saghîr*, 7518.

Ja`âlah (A Contract of Achieving an Expected Benefit)

Ja`âlah is a form of contract conducted between a person who needs to obtain some expected benefit, such as bringing something lost, and a person who is ready to achieve this benefit. An "expected" benefit means that the lost thing for example is expected to be found if some effort is exerted for getting it. According to this contract certain remuneration for doing the job in question is to be defined. *Ja`âlah* also applies to such things as defining a certain compensation for a person for helping one's son to memorize the Qur'ân, or for curing him, and the like.

The original *shar`î* proof of the legality of *ja`âlah* is the following verse concerning the story of Prophet Yûsuf (Joseph),

﴿قَالُوا نَفْقِدُ صُوَاعَ الْمَلِكِ وَلِمَن جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ﴾

﴿*They said: 'We have missed the (golden) bowl of the king and for him who produces it is (the reward of) a camel load; I will be bound by it.'*﴾

(Qur'ân: 12: 72)

[1] For more details about the relation between *wakâlah* and trusts, you may review the section dealing with *wadi'ah* (trusts deposited for safekeeping) in this book.

As far as the contract of *ja`âlah* is concerned, it is not stipulated that the two parties of the contract be present because Almighty Allah says in the verse mentioned above, ﴾*... and for him who produces it is (the reward of) a camel load...*﴿ Thus, it could be done between the owner of the lost thing and any person who may bring it later on.

Moreover, the contract of *ja`âlah* can be canceled by one of the two parties of the contract, and it is for the person who is do the job to cancel the contract before starting to do it or after that as long as he accepts to cancel the defined remuneration.

Finally, it may be worth mentioning that some scholars, including Ibn H̱azm, do not approve of *ja`âlah* contracts.

Wasiyyah (Wills and Bequests)

Definition and Legality

In Islam, *wasiyyah* is that a person gives or leaves property by will to another person, yet the latter is to possess the bequeathed property after the death of the former.

Almighty Allah says,

﴿كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْراً الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ بِالْمَعْرُوفِ حَقّاً عَلَى الْمُتَّقِينَ﴾

﴿*It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon the pious.*﴾

(Qur'ân: 2: 180)

He also says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِّنكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ﴾

﴿*O you who believe! When death approaches any of you, and you make a bequest, then take the testimony of two just men of your own folk or two others from outside...*﴾

(Qur'ân: 5: 106)

In addition to this, it has been narrated on the authority of Ibn `Umar, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"It is rightful upon a Muslim that he must not spend two (consecutive) nights without having his written bequest with him if he has anything that can be bequeathed."*[1]

This means that to take precautions against the surprise of death, the Muslim may make his bequest very soon.

The *Shar`î* Ruling concerning *Wasiyyah*

Scholars have differed concerning the *shar`î* ruling concerning *wasiyyah*, as follows:

Some scholars, including Ibn Hazm, say it is obligatory upon whoever has property whether it is little or much. They seek proof in the verse quoted above, ﴾*It is prescribed for you, when death approaches any of you...*﴿ (Qur'ân: 2: 180)

Some others, including, Az-Zuhrî, assert that it is obligatory for a person's parents as well as for his relatives who will not inherit him.

And still some other scholars, including the Four *Imâms*, that it can be obligatory, or desirable, or allowable, or prohibited, or detestable according to the conditions and circumstances in which the bequest is made. It becomes **obligatory** when a person must fulfill a certain *shar`î* right – such as paying *Zakâh* or performing *Hajj* – but he has not

[1] Narrated by Al-Bukhârî, Muslim, and others.

fulfilled this right yet when death approaches him. It becomes **desirable** when it is made for drawing near to Allah and for one's kith and kin as well as righteous people. It is **allowable** (*mubâhah*) if it is made for a rich person whether this person is a relative of the person who makes the bequest or not. It becomes **prohibited** if it causes harm to the inheritors of the person who makes this *wasiyyah*. And finally *wasiyyah* becomes **detestable** if the property of the person who makes it is little while he has an inheritor or inheritors who need this property; and it becomes also detestable if it is to be made for an immoral or disobedient person or for a person who will most probably use the money in performing acts of disobedience.

The Conditions of *Wasiyyah*

The conditions of *wasiyyah* are connected to three persons: the person who makes it, the person for whom it is made, and the thing which constitutes the *wasiyyah*, i.e., the property bequeathed. The conditions of *wasiyyah* will be listed bellow according to this division, as follows:

1. The person who bequeaths must be legally qualified for making legacies, and this qualification is achieved if he is sane, mature, free, and willing, as well as if he is not placed under guardianship because of foolishness, prodigality, or anything of the kind. But if a person who is placed under guardianship makes a bequest for some charitable cause and his inheritor permits it, it is to be effective. However, according to Mâlik, a bequest made by a person of weak sanity or a child who can understand the

meaning of drawing near to Allah through bequests, is valid.

2. The person for whom the bequest is made must not be one of the inheritors of the person who bequeaths. This is according to the H̲anafîs. Also, the person for whom the bequest is made must not kill the person who bequeaths in any form of the prohibited killing or else he will not receive any of the property assigned in the bequest. This is according to Abû Yûsuf.

3. It must be possible that the thing which constitutes *was̲**iyyah*, i.e., the property bequeathed**, can be possessed by the person for whom the bequest is made after the death of the person who makes this bequest. Therefore, *was̲iyyah* will not be effective if a person makes a bequest with something which cannot be existent after his death. However, it is permissible for a person to bequeath the fruit that his trees will produce after his death or a debt that is to be collected after his death.

Also, *was̲iyyah* will not be effective if a thing that is not regarded as an item of property, such as carrion, is bequeathed. And finally, things such as intoxicants are not to be bequeathed.

The Amount of Property That Can Be Bequeathed

It has been narrated that Sa`d Ibn Abû Waqqâs̲, may Allah be pleased with him, said,

> "In the year of the last H̲ajj of the Prophet (PBUH) I became seriously ill and the

Prophet (PBUH) used to visit me inquiring about my health. I said to him, 'I am reduced to this state because of illness and I am wealthy and have no heirs except a daughter. Should I give two-thirds of my property in charity?' He said, '*No.*' I asked, 'Half?' He said, '*No.*' then he added, '*One third, and even one third is much. It is better that you leave your inheritors wealthy rather than leaving them poor, begging others. You will get a reward for whatever you spend for Allah's sake, even for what you put in your wife's mouth.*' I said, 'O Messenger of Allah! Will I be left alone after my companions have gone?' He said, '*When you are left behind, whatever good deeds you (have done or will) do will elevate you and raise you high. And perhaps you will have a long life so that some people will be benefited by you while others will be harmed by you...*'"[1]

Bequeathing for Heirs

It has been narrated on the authority of Abû Umâmah Al-Bâhilî that he heard the Messenger of Allah (PBUH) saying in his sermon in year of the Farewell Pilgrimage,

"*Verily, Allah has given whoever has a right his right (in full), so there is no bequest for an heir.*"[2]

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by Ibn Mâjah and others.

When *Waṣiyyah* Becomes Due

A bequest becomes due and those for whom it has been made have the right to take the property defined in it only after the death of the person who has made this bequest and paying his debts back if there are any. If the debts exceed the whole property that he has left, then nothing will be due for those for whom the bequest has been made. This is because Almighty Allah says in one of the verses concerning inheritance,

﴿مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ﴾

﴾*... (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts...*﴿

(Qur'ân: 4: 11)

When *Waṣiyyah* Is Invalidated

Waṣiyyah is invalidated whenever any of the conditions listed above is not met, as well as if the person for whom the bequest is made dies before the person who has made it for him. And, Allah knows best.

Questions and Answers on Dealings and Transactions

Q: Many of the dealings and transactions through which people interact with one another are connected to money and property in general. What is the Islamic attitude toward the sanctity of property?

A: The Muslim is permitted to acquire wealth, as much as he desires, as long as he gains and increases it through lawful means and investments. Also, Islam sanctions the right to personal property, and that is why it protects it, both by means of moral exhortation and legislation, from robbery, theft, and fraud. Almighty Allah says,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلاَّ أَن تَكُونَ تِجَارَةً عَن تَرَاضٍ مِّنكُمْ﴾

﴿*O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent...*﴾
(Qur'ân: 4: 29)

And emphasizing what Allah has prohibited to the Muslim in respect of other people's property, the Prophet (PBUH) declared,

"It is unlawful for the Muslim to take (so much as) a stick without the consent of its owner."[1]

And, Allah knows best.

Q: Islam sanctifies work and condemns lethargy, but is there any case in which begging is allowable?

A: First of all, it has been narrated that the Prophet (PBUH) said,

> *"Any one who begs from people in order to increase his wealth will have his face scratched on the Day of Resurrection, and will eat burning stones from Hell. So let him reduce it (his punishment) or let him increase it as he pleases."*[2]

He (PBUH) also said,

> *"He who begs without need is like a person holding a burning coal in his hand."*[3]

Still, the Prophet (PBUH) was aware of situations of necessity. If a person is forced, under the pressure of need, to ask for financial help from the government or from individuals, he is blameless. The Prophet (PBUH) said,

> *"Begging is similar to scratching the flesh off your face. So if someone wants to save his face he should avoid it, except for asking from the ruler or asking in case of dire need."*[4]

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[1] Narrated by Ibn Hibbân.

[2] Narrated by At-Tirmidhî.

[3] Narrated by Al-Bayhaqî.

[4] Narrated by Abû Dâwûd and An-Nasâ'î.

Again, it has been narrated that the Prophet (PBUH) said to Qubay<u>s</u>ah,

> *"O Qubay<u>s</u>ah! Asking (for money) is not permissible except in three cases: (i) for a man who takes it upon himself to pay <u>h</u>amâlah,[1] as he may ask people for help until the designated amount is received and then he should stop asking; (ii) for a man who suffers calamity and loses his property, as it is permissible for him to ask until he is able to stand on his own feet; and (iii) for a man who is starving, until three reliable persons from his community say, 'That man is reduced to hunger,' (as then) it is permissible for him to ask until he is able to stand on his own feet."*

After that the Prophet (PBUH) said, *"Except for these, O Qubay<u>s</u>ah, begging is fire; it is like eating fire."*[2] And, Allah knows best.

Q: What is the *shar`î* ruling concerning salaried employment?

A: The Muslim is free to seek employment in the service of the government, an organization, or an individual as long as he is able to do his work satisfactorily and carry out his duties. However, he is not permitted to seek a job for which he is unfit, especially if the job carries judicial or executive authority. It has been narrated on the authority of

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[1] *<u>H</u>amâlah* is an amount of money paid for making peace between two quarreling parties.

[2] Narrated by Muslim.

Abû Hurayrah, may Allah be pleased with him, that the Prophet (PBUH) said,

> *"Woe to rulers, leaders, and trustees! On the Day of Resurrection some people will wish that they could be suspended between heaven and earth rather than having had the burden of their responsibilities."*[1]

It is better for the Muslim not to aspire to a high position, even though he may be suited to it, and to seek something else, for he may become a slave of that position. Also, whoever turns his face toward worldly glories may not receive guidance from heaven.

If a person knows, however, that there is no one else qualified to do a particular job except himself, and that if he does not take it, public interests will be endangered, then he must accept the position in question. To this effect you may remember that Prophet Yûsuf (Joseph) said to the ruler,

﴿اجْعَلْنِي عَلَى خَزَائِنِ الأَرْضِ إِنِّي حَفِيظٌ عَلِيمٌ﴾

> ﴿*Set me over the storehouses of the land; I am surely a knowledgeable custodian.*﴾
>
> (Qur'ân: 12: 55)

And, Allah knows best.

Q: What is the *shar`î* ruling concerning having a job related to dancing and other erotic arts?

A: Islam does not permit sexually exciting dancing or any other erotic activity, such as suggestive or

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[1] Narrated by Ibn Hibbân

obscene songs, provocative dramas, and every type of such rubbish-like things which some people may affiliate to arts or progress.

Almighty Allah says,

﴿وَلَا تَقْرَبُوا الزِّنَى إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا﴾

﴾*And come not near to the unlawful sexual intercourse. Verily, it is a Fâhishah (i.e. anything that transgresses its limits [a great sin]), and an evil way (that leads one to Hell unless Allah forgives him).*﴿

(Qur'ân: 17: 32)

This indicates that not only *zinâ* is forbidden, but any thing which brings one near to it is also forbidden, including the things referred to above. This is because provocative dances and songs are included in the expression "coming near *zinâ*," especially with the fact that these things can easily tempt, excite, and lead people toward such a sin.

Finally, Islam does not allow that a Muslim contributes to undertaking any of such abominable acts and works. And, Allah knows best.

Q: What is the *shar'î* ruling concerning making statues and similar articles?

A: Islam prohibits the acquisition of statues and even more strongly the making of them. However, drawing, painting, and photography are either permitted or at worst disapproved, depending on what comes closest to the spirit of the Islamic legislation. Their subject matter should not be sexually

provocative, as, for example, the erotic parts of the female body or a man and woman in a state of intimacy, and should not be of someone sacred or respected, such as angels or prophets. And, Allah knows best.

Q: What is the *shar`î* ruling concerning price manipulation?

A: In Islamic perspective the market is to be free and permitted to respond to the natural laws of supply and demand. Thus, when the prices became high in the Prophet's time and the people asked him to fix prices for them, he replied,

> *"Allah is the One Who fixes prices, Who withholds, Who gives lavishly, and Who provides, and I hope that when I meet Him none of you will have a claim against me for any injustice with regard to blood or property."*[1]

This means that unnecessary interference in the freedom of individuals is injustice and that one should meet Allah free from blame for such a thing. If, however, any artificial forces, such as hoarding and manipulation of prices by certain merchants, interfere in the free market, public interest takes precedence over the freedom of such individuals. Under such circumstances price control becomes permissible in order to meet the needs of the society and to protect it from greedy opportunists by thwarting their schemes.

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[1] Narrated by Ahmad and others.

Scholarly researchers have concluded that, depending on the nature of the circumstances, price control may at times be unjust and prohibited, and at other times may be just and permissible. If price control compels people to sell their goods at a price which is not acceptable to them or denies them the reasonable profit permitted by Allah, it is prohibited. But if price control establishes equity among people, for example, by forcing sellers to accept a price equal to that commanded by other comparable commodities and restraining them from taking more than this, then it is allowed, for this is necessary. And, Allah knows best.

Q: What is the *shar`ī* ruling concerning hoarding?

A: Freedom for individual and natural competition in the marketplace is guaranteed by Islam. Nevertheless, Islam severely condemns those who, driven by ambition and greed, accumulate wealth at the expense of others and become rich by manipulating the prices of food and other necessities. That is why the Prophet (PBUH) denounced hoarders, saying,

> *"If anyone withholds grain for forty days out of the desire for a high price, Allah will renounce him."*[1]

He (PBUH) also said,

> *"If anyone withholds goods until the price rises, he is a sinner."*[2]

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[1] Narrated by Aḥmad and others.
[2] Narrated by Muslim.

And exposing the selfish and greedy mentality of hoarders, the Prophet (PBUH) declared,

> *"The man who hoards goods is evil. If prices fall he is grieved, and if they rise he is happy."*[1]

Thus, on the basis of the aforementioned texts and other ones, scholars have deduced that hoarding is prohibited under two conditions: first, that hoarding at a given time is injurious to the people of the country in question, and second, that the hoarder's aim is to force the price up in order to make more profit. And, Allah knows best.

Q: What is the *shar`î* ruling concerning interference in the free market?

A: This is a practice which is related to hoarding which was prohibited by the Prophet (PBUH). Here is a situation in which this kind of dealing can be practiced: A stranger may bring some goods to be sold in town at the current market price. A townsman would approach him, saying, "Leave them with me for a while. I will sell them for you when the price is better." Had the non-resident himself sold his goods, he would have done so for a lower price, thereby benefiting the people, while he himself would have made a reasonable profit.

This form of dealing was very common within the Arab society when Islam came. It has been narrated that Anas said,

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[1] Recorded by Ar-Râzî in his *Jâmi`*.

"Sale by a townsman on behalf of a desert-dweller was prohibited to us, even though he might be a blood brother."[1]

This indicates that for the Muslim the public interest takes precedence over personal relationships.

It has moreover been narrated that the Prophet (PBUH) said,

"A resident (of town) must not sell for a man from the desert. Leave people alone, so that Allah may give them provision from one another."[2]

The expression "*Leave people alone, so that Allah may give them provision from one another,*" establishes a basic principle in the field of commerce: that the market, including its prices and sales, should be left free to respond to internal economic forces and natural competition without manipulation. And, Allah knows best.

Q: Is brokerage permissible?

A: Brokerage is permissible as long as it is a sort of fair mediation and connection between the buyer and the seller, which facilitates a profitable transaction for at least one of them or for both according to Islamic laws and without any helping in such forbidden forms as price manipulation, hording, or interference in the free market.

Nowadays, middlemen have become more necessary than at any time in the past because of the

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Muslim.

complexities of trade and commerce, which involve all types of exports and imports, and wholesale and retail sales and purchases; brokers play a very important role in keeping things moving. There is nothing wrong, therefore, with the broker's charging a commission for his services. The commission may be a fixed amount or proportional to the volume of sales or whatever is agreed upon among the parties involved. It has been narrated by Al-Bukhârî that Ibn Sîrîn and others saw nothing wrong with commissions charged by brokers, and that Ibn `Abbâs said,

> "There is no harm if one person says to another, 'Sell this robe, and if you sell it for more than such and such a price, you can keep the extra amount'."

In the same narration Ibn Sîrîn said,

> "There is nothing wrong if one person says to another, 'Sell it for this price and keep the profit,' or 'The profit will be shared between you and me.' The Prophet (PBUH) said, '*Muslims must abide by their terms.*'"[1]

And, Allah knows best.

Q: What is the *shar`î* ruling concerning frequent swearing when undertaking some transaction?

A: The sin of deceiving is greater when the seller supports it by taking a false oath by Allah or any of His Attributes, and still a much greater sin is committed if the person in question swears by other

[1] Narrated by Al-Bukhârî and others.

than Allah or any of His Attributes. The Prophet (PBUH) said,

> *"Whoever swears by other than Allah will have committed (an act of) disbelief or (an act of) polytheism."*[1]

And, the Prophet (PBUH) said that merchants should avoid swearing in general and, in particular, in support of a lie, saying,

> *"Swearing (may) produce a ready sale but blots out the blessing."*[2]

He (PBUH) disapproved of frequent swearing in business transactions because first, it is probably done to deceive people, and second, because it takes away one's glorification of the name of Allah from one's heart. And, Allah knows best.

Q: What is the *shar`î* ruling concerning withholding full measure?

A: One way of defrauding the customer is to measure or weigh incorrectly. The Qur'ân emphasizes this aspect of business transactions, i.e., giving full measure and full weight, and includes it among the ten obligations described in the last part of the chapter of Al-An`âm; Almighty Allah says,

﴿وَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ لاَ نُكَلِّفُ نَفْساً إِلاَّ وُسْعَهَا﴾

> ﴿*... And give full measure and (full) weight, in justice; We do not burden any soul beyond what it can bear...*﴾

(Qur'ân: 6: 152)

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[1] Narrated by Al-Bukhârî and Muslim.
[2] Narrated by Al-Bukhârî.

In another chapter Almighty Allah says,

﴿وَأَوْفُوا الكَيْلَ إِذَا كِلْتُمْ وَزِنُوا بِالْقِسْطَاسِ المُسْتَقِيمِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلاً﴾

﴾*And give full measure when you measure and weigh with the straight balance; that is more charitable and fairest in interpretation*﴿

(Qur'ân: 17: 35)

Allah also says,

﴿وَيْلٌ لِّلْمُطَفِّفِينَ ۞ الَّذِينَ إِذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ ۞ وَإِذَا كَالُوهُمْ أَو وَّزَنُوهُمْ يُخْسِرُونَ ۞ أَلاَ يَظُنُّ أُولَئِكَ أَنَّهُم مَّبْعُوثُونَ ۞ لِيَوْمٍ عَظِيمٍ ۞ يَوْمَ يَقُومُ النَّاسُ لِرَبِّ العَالَمِينَ﴾

﴾*Woe to the defrauders – those who, when they take the measure from people take it in full, but when they measure for them or weigh for them give them short. Do they not realize that they will be raised up again on a mighty Day, a Day when mankind will stand before the Lord of the worlds?*﴿

(Qur'ân: 83: 1-6)

Therefore, the Muslim must try to do justice in measuring and weighing as accurately as it is humanly possible, although absolute accuracy in this regard may not be attainable. And, Allah knows best.

Q: What is the *shar`î* ruling concerning buying stolen property?

A: In order to combat crime and to confine the criminal within a very narrow sphere of activity,

Islam has prohibited the Muslim to buy any article which he knows to have been usurped, stolen, or taken unjustly from its owner. Any one who does so abets the usurper, the thief, or the person committing injustice in his respective crime. The Prophet (PBUH) said,

> *"He who buys something stolen, while being aware that it is stolen, shares in the sin and the shame of stealing."*[1]

And, Allah knows best.

Q: What is the *shar`î* ruling concerning insurance companies?

A: This question must be concerning the present-day companies which issue life insurance and insurance against hazards and accidents. What is the Islamic ruling concerning such companies?

First of all, suppose that a person takes out insurance for twenty thousand dollars and dies soon after paying the first premium, his beneficiaries are then entitled to the entire sum of twenty thousand dollars. Had this been a business partnership, they would have been entitled only to the amount of the premium which was paid plus the profit on it. Again, if the insured person fails to pay his premiums after having paid a few of them, according to the terms of insurance in these companies he will lose all or a great part of what he has already paid. This is an invalid condition.

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[1] Narrated by Al-Bayhaqi.

The argument that the two parties, the insured and the insurance firm, enter into this contract willingly in accordance with their respective self-interest carries no weight, and so do the lender and the borrower on interest and two gamblers. The mutual agreement of the two parties has no validity in a transaction which is not based on justice and equity, and which is not devoid of ambiguity or exploitation. Moreover, since justice, with no harm either to oneself or others, is the ultimate criterion here, a transaction is invalid if it stipulates that in certain situations one party is to take all, with no benefits guaranteed to the other. And, Allah knows best.

Q: What is the *shar`î* ruling concerning partnership in raising animals?

A: Partnership in raising animals is quite common in Muslim countries, especially in villages. One of the partners puts up all or a part of the price of some livestock and cattle, while the other partner raises them; the two then share the yield and the profits of this joint venture.

This partnership is entered into on the basis of purely commercial purposes, e.g., raising calves for beef or cows and water buffalo for milk production. It is supposed here that one partner contributes the price of the animals and the other contributes the effort, that is to say, the management and supervision. The expenses of feeding, watering, and the like are borne by the joint partnership and not by one partner alone. After a sale is made, the feeding

expenses are deducted from the proceeds before dividing up the profits in the agreed-upon proportions. It is not just that one partner alone be required to bear all the feeding expenses without receiving any commensurate return, while the profits are divided between the two; this point is quite clear.

Another aspect of this partnership is the same as the first except that the partner who manages the business also bears the feeding expenses and in return benefits from the milk or makes use of the animals in the field for plowing, irrigating, or planting; this is the situation when large animals are involved. *Shaykh* Yûsuf Al-Qaradâwî says that this contract may involve no harm, although it may not be possible to balance exactly the cost of feed with the benefits derived from milking or working the animal or animals in question, so that there is an element of uncertainty about it. He adds that the element of risk is negligible, and there are other examples of such contracts which are permitted by the *Sharî`ah*. It has been narrated, concerning mortgages, that the Prophet (PBUH) stated the permissibility of using an animal which is mortgaged for riding or milking, saying,

> *"One can ride the mortgaged animal because of what one spends on it, and one can drink the milk of a milch animal as long as it is mortgaged."*[1]

Here, Al-Qaradâwî concludes, if this type of mortgage is allowed for people's mutual benefit, with the possibility that the expenses of feeding may be more

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[1] Narrated by Al-Bukhârî.

or less than the benefit derived from the animal by using it for riding or milking, then there may be no harm in allowing a similar arrangement in the case of partnerships in raising animals, as the needs of people are better served in this manner.

However, if the partnership is in raising young calves which cannot be used for work or for milk stipulating that the price be paid by one partner and the feeding expenses by the other, the rules of Islam do not permit such an arrangement. The partner who bears the cost of feeding is the only loser, as he receives no return in the form of work or milk, while the other partner has the clear advantage. And, Allah knows best.

Part Seven

The Rules of Inheritance

The Verses of Inheritance

The following verses include the general and basic rules of inheritance in the Qur'ân. We have placed them at the beginning so that our readers may quickly view the rules of inheritance in general as well as the share of each inheritor as recorded in the Qur'ân. This may make it easier for them to comprehend the difficult and confusing questions related to inheritance and its rules and laws. Almighty Allah says,

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلاَدِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الأُنثَيَيْنِ فَإِن كُنَّ
نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا
النِّصْفُ وَلأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ
لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلأُمِّهِ الثُّلُثُ فَإِن كَانَ
لَهُ إِخْوَةٌ فَلأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ
آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لاَ تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعاً فَرِيضَةً مِّنَ
اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيماً حَكِيماً ۝ وَلَكُمْ نِصْفُ مَا تَرَكَ
أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ
مِمَّا تَرَكْنَ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبُعُ
مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ
مِمَّا تَرَكْتُم مِّنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِن كَانَ
رَجُلٌ يُورَثُ كَلاَلَةً أَوِ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ
مِّنْهُمَا السُّدُسُ فَإِن كَانُوا أَكْثَرَ مِن ذَلِكَ فَهُمْ شُرَكَاءُ فِي
الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ

وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ ۞ تِلْكَ حُدُودُ اللَّهِ وَمَن يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِن تَحْتِهَا الأَنْهَارُ خَالِدِينَ فِيهَا وَذَلِكَ الْفَوْزُ الْعَظِيمُ﴾

﴿Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise. In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left

neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing. These are the limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and His Messenger (Muhammad) will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success.﴾

(Qur'ân: 4: 11-13)

Allah also says,

﴿يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلاَلَةِ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِن لَّمْ يَكُن لَّهَا وَلَدٌ فَإِن كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ وَإِن كَانُوا إِخْوَةً رِّجَالاً وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَن تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ﴾

﴿*They ask you for a legal verdict. Say: 'Allah directs (thus) about Al-Kalâlah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes*

her inheritance. If there are two sisters, they shall have two thirds of the inheritance; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything.'

(Qur'ân: 4: 176)

Introduction to Inheritance

First of all, the rules of inheritance are known in Arabic as "*Al-Frâ'id*," and the word itself literally means "rules" or "laws" in this context. These rules are so significant in Islam that the Prophet (PBUH) said concerning them,

> *"Learn the rules (of inheritance) and teach them to people, for they constitute half of knowledge."*[1]

Inheritance is the entry of living persons into possession of dead persons' property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system. The actual forms of inheritance and the laws governing it, however, differ according to the ideals of different societies.

The law of inheritance in Islam is based upon five main considerations:

- To break up the concentration of wealth in individuals and spread it out in society.

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[1] Narrated by Al-Bayhaqi and others.

- To respect the property right of ownership of an individual earned through honest means.
- To etch in the consciousness of man the fact that he is not the absolute master of wealth he produces but he is its trustee and is not, therefore, authorized to pass it on to others as he likes.
- To consolidate the family system, which is the social unit of an Islamic society.
- To give incentive to work and encourage economic activity as sanctioned by Islam.

In the pre-Islamic world and even in modern societies the law of inheritance has so many evils in it. Perhaps one of the most evident and heinous aspects of this evil is that women were completely denied their share of inheritance, and they were rather regarded as part of the property of the deceased person and, therefore, their right to property by inheritance was out of question. In addition to women, even weak and sick people and minor children were given no share in inheritance, as the common principle of inheritance was that "only he who wields the sword is entitled to inherit". And still, in certain societies there had existed the law of primogeniture and it exists even today in some of the so-called civilized parts of the world which entitles only the eldest son to inherit the whole of the father's property.

Islam has introduced so many reforms in the laws of inheritance. It has defined and determined very obviously the share of each inheritor imposing limits on the right of the property-owner to dispose of his property according to his whim and caprice. It has

made the female a co-sharer with the male and thus it has not only restored her dignity but has also safeguarded her social and economic rights. Moreover, Islam has laid the rules for the break-up of the concentrated wealth in society and helped in its proper and equitable distribution amongst a large number of persons. It has forbidden the law of primogeniture thus providing the democratic basis for the division of the property of the deceased.

The above are some of the distinguishing features of the Islamic law of inheritance.

The Wisdom behind Inheritance in Islam

The wisdom behind the legislation of inheritance can be summed up in the following points:

- Islam has ordained that the property of the deceased person is to be possessed – after his death – by the members of his family, and this reflects Islam's respect to the ownership of individuals.
- Islam has prescribed inheritance to be for the nearest kith and kin of the deceased person because they help him during his lifetime and it so much happens that they participate in establishing and making his property. Thus, they receive some "gain" in return for some "pain".
- Islam has defined for every inheritor a certain share, thus blocking all ways to disputation with which animosities among relatives appear and mercy disappears.

- The share of the female is half of the male because he supports his family and he alone is legally responsible for that.
- The marital relationship has been attached to the kinship relationship as a sign of sanctification of the relation between spouses and bringing out the aspect of fidelity and devotion.

The Rights Related to the Property to Be Inherited

While laying down the rules for the distribution of the estate of the deceased person, the first principle to be observed is that the property both movable and immovable can be distributed after meeting the following obligations:

- funeral expenses;
- clearing off the debts incurred by the deceased person;
- and payment of bequest, if any, to the extent of one third of the total assets.

It may be remembered that the *mahr* (Islamic dowry) of the wife of the deceased person, if it had not been paid, is included in his debts. Moreover, it is not lawful to make a bequest in favor of a person who is entitled to a share in the inheritance.

Who Are Not to Get Inheritance

Four persons cannot get inheritance:

1. A fugitive slave who has fled away from his master.

2. A person who has murdered his predecessor (who is to be inherited) intentionally or unintentionally.
3. A person who professes a religion other than Islam.
4. A person living in *dârul-harb* (a place or country which is in a state of war against Islam) cannot inherit the property of a person living in *dârul-islâm* (a place or country of Muslims and where Muslims have control) and vice versa.

The Recipients of Inheritance

According to Islam, heirs have been divided into three classes.

1. *Dhawul-Farâ'id* (Heirs who have definite shares)

These are those persons who have a right to definite shares in assets left by the deceased person. These sharers are twelve in number; four males: father, grandfather, maternal brothers, and husband; and eight females: wife, single daughter, son's daughter, mother, grandmother, full sister, paternal sister, and maternal sister.

The father's share is one sixth when the deceased person leaves a son or a son's son, but if the deceased person is not survived by a son or grandson his father will, in addition to this share (one sixth), get a share of being a *'asabah*.[1]

[1] The meaning of *'asabah* will soon be explained in the next division of inheritors.

The grandfather's share is like that of the father but in three conditions:

According to *Imâm* Al-Bukhârî and *Imâm* Muslim, the presence of a father deprives even the brothers of their share in the inheritance, but this is not the case with the grandfather. *Imâm* Abû Hanîfah is of the opinion that the presence of a grandfather deprives the brother of his share in the inheritance.

If the father of the deceased person is alive, then the share of the mother is of what is left from the share of the wife of the deceased person. The presence of grandfather does not reduce the share of the mother of the deceased person.

The grandmother of the deceased person has no share in the presence of the father of the deceased person but she has a share in the presence of the grandfather.

Maternal brothers and sisters are entitled to one sixth if their number is one, and one third if they are more than one.

The husband's share is one half of the property of the deceased wife if she has no children, but in case of children it is one fourth.

The wife is entitled to one fourth if the husband dies childless; otherwise it is one eighth.

Daughter gets one half when alone, and if there are more than one daughter they get two thirds. If the deceased person is survived by a male child also, the daughters are then treated as *`asabah* and the male child will get double of what falls to the lot of daughters.

Granddaughters stand on the same level as daughters. But in case the deceased person is survived by one daughter and one or more than one granddaughter, they will get one sixth. The granddaughter is not entitled to any share if the deceased person is survived by a son, but if he is survived by grandsons and granddaughters, they will be treated as *`asabah* and the male grandchild will get double of what goes to the female grandchild.

Full sister gets one half if she is alone, and if there are more than one sister they get two thirds.

Paternal sister is entitled to one half if one, and two thirds if more.

Mother is entitled to one sixth when she has a child or grandchild, and if there is no child she gets one third. If the deceased person is survived either by a paternal grandmother or a maternal grandmother or even by both, they are entitled to one sixth. The maternal grandmother is deprived of her share if the mother of the deceased person is alive; and if the father is alive, the paternal grandmother is deprived of this share.

2. *`Asabah* (Relatives in whose line of relationship no female enters)

When the heirs of the first group have received the respective shares, the remainder of the assets falls to the share of those relatives who are called *`asabah* which, according to the *Sharī`ah*, implies those relatives in whose line of relationship no female enters. This is the second group of inheritors.

**There is no fixed share of `a<u>s</u>abahs**. If the deceased person is not survived by any of *dhawul-farâ'<u>d</u>* (the first group above), the whole of the property falls to their share; and If *dhawul-farâ'<u>d</u>* are there to get their due share, the remainder will be taken by the `*a<u>s</u>abah*s. The following are the `*a<u>s</u>abah*s:

Son is the first to get the remainder in order of succession. Daughters are entitled to half of the share as given to the son. Grandsons are not entitled to any share in the presence of the son. If the son is not living, then the grandson is entitled to a share in the inheritance. If there are more than one son, the inheritance will be distributed equally amongst them.

The father, grandfather, and the great-grandfather are included in the category of *dhawul-farâ'<u>d</u>*. If, however, the deceased person is not survived by category of a son, grandson, or great-grandson, then the father will fall under the category of `*a<u>s</u>abah*, and, in the absence of the father, the grandfather assumes that position.

If the deceased person is not survived by son, or grandson, or father, or grandfather, i.e., none amongst the `*a<u>s</u>abah*s, then the brother, and in the absence of brother his son, and in the absence of son his grandson will be entitled to share in the inheritance as `*a<u>s</u>abah* and the female will also join them in share claiming half of the share as compared with male.

If the deceased person is survived by none of the above-mentioned relatives amongst the `*a<u>s</u>abah*s, then paternal brother will be entitled to share in the inheritance and he will be preferred to full brother's son. Then comes the turn of full paternal uncle.

3. *Dhawul-Arhâm* (Relatives connected through females)

This is the last category of inheritors, and the term "*dhawul-arhâm*" refers to relations connected through females, but it is in extremely rare cases that they get any share in the inheritance. The following relatives come under this category.

- The son of the daughter and the daughter of the daughter.
- The son of the daughter of the son and the daughter of the daughter of the son and their children.
- Maternal grandfather, maternal grandfather of the father, the grandfather of the mother, maternal grandfather of the mother, the grandmother of the mother, the children of the sisters, the sisters of the father and those of the mother, etc.

Inheritance Shares as Prescribed in the Qur'ân

This is another way of displaying and listing the shares of inheritances as prescribed in the Qur'ân. It may be easier for some people to understand the share of each of the recipients of inheritance (as mentioned in the previous section) by following the shares of inheritance themselves and how they are distributed among those recipients.

The shares prescribed in the Qur'ân are six: one half, one fourth, one eighth, two thirds, one third, and

one sixth. Each share can be listed and attached to its recipients as follows:

One half

This is the share of five heirs:

- **Husband**, if his wife has no children, because Almighty Allah says, ﴾*In that which your wives leave, your share is a half if they have no child...*﴿[1]
- **Daughter,** because Almighty Allah says, ﴾*...if only one, her share is half...*﴿
- **Son's daughter**, because she is to take the share of the daughter.[2]
- **Full sister and paternal sister,** because Almighty Allah says, ﴾*... If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance...*﴿

One fourth

This is the share of two heirs:

- **Husband**, if his wife has children, because Almighty Allah says, ﴾*... but if they leave a child, you get a fourth of that which they leave...*﴿
- **Wife**, if her husband does not have children, because Almighty Allah says, ﴾*... In that which*

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[1] All the Qur'ânic quotations to follow are included in the verses of inheritance quoted at the beginning of this part. All of the verses are from the chapter of An-Nisâ', (Qur'ân: 4: 11, 12 and 176).
[2] See *Al-Ijmâ'*, 79.

you leave, their (your wives) share is a fourth if you leave no child...

One eighth

This is the share of one heir, who is the **wife** whose deceased husband has children. Almighty Allah says,

...but if you leave a child, they get an eighth of that which you leave...

Two thirds

This is the share of four heirs:

- **Two daughters** (or more) **and two granddaughters** (daughters of the son) (or more). Almighty Allah says, *... if (there are) only daughters, two or more, their share is two thirds of the inheritance...*
- **Two full sisters and two paternal sisters**. Almighty Allah says, *... If there are two sisters, they shall have two thirds of the inheritance...*

One third

This is the share of two heirs:

- **Mother**, if she is not excluded (from this share by means of *hajb* or exclusion)[1]. Almighty Allah says, *... if no children, and the parents are the (only) heirs, the mother has a third...*

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[1] *Hajb* or exclusion from inheritance or from a certain share. It will soon be tackled in detail right after the current section.

- **Two or more of maternal brothers and sisters**. Almighty Allah says, ﴿*If the man or woman whose inheritance is in question has left neither aseendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third...*﴾

One sixth

This is the share of seven heirs:

- **Mother,** with the existence of son or brothers (or sisters). Almighty Allah says, ﴿*... For parents, a sixth share of inheritanee to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth...*﴾
- **Grandmother**, when mother is not alive. Ibnul-Mundhir has stated that scholars unanimously agree that grandmother has one sixth if the deceased person has no mother.[1]
- **One maternal brother or sister**, because Almighty Allah says, ﴿*If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth...*﴾
- **Son's daughter with the existence of daughter**. It has been narrated that Huzayl

[1] See *Al-Ijmā'*, 84.

Ibn Shirahbî said, "Abû Mûsâ was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister. He said, 'The daughter will take one half and the sister will take one half. If you go to Ibn Mas`ûd, he will tell you the same.' Ibn Mas`ûd was asked (about that) and was told of Abû Mûsâ's verdict. Ibn Mas`ûd then said, 'If I give the same verdict, I will stray and will not be of the rightly-guided. The verdict I will give in this case will be the same as the Prophet (PBUH) did; that is, one half is for the daughter and one sixth for the son's daughter, thus both shares making two thirds of the total property; and the rest is for the sister.' Afterwards we came to Abû Mûsâ and informed him of Ibn Mas`ûd's verdict, whereupon he said, 'So, do not ask me for verdicts, as long as this learned man is among you.'"[1]

- **Paternal sister with the existence of full sister,** and by her taking one sixth that will make two thirds of the total property, just as in the case of son's daughter with the existence of daughter.
- **Father with the existence of son.** Almighty Allah says, ﴿*... For parents, a sixth share of inheritance to each if the deceased left children...*﴾
- **Grandfather when there is no father.** Ibnul-Mundhir has stated that scholars unanimously agree that grandfather is to be treated as father (when the latter is not alive).[2]

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[1] Narrated by Al-Bukhârî and others.
[2] See *Al-Ijmâ`*, 84.

Hajb (Exclusion or Disinheritance)

Hajb is that a certain person is excluded from inheritance as a whole or from a certain share in it because of the existence of a certain person among heirs.

Accordingly, it is divided into two sections:

1. *Hajb nuqsân* or decrease-based exclusion, and it is that the share of one of the heirs is decreased because of the existence of another heir. This can be illustrated through the following cases which represent the conditions in which this type of *hajb* is applied:

- Husband is excluded from the share of one half to the share of one fourth with the existence of a child of his deceased wife.
- Wife is excluded from the share of one fourth to that of one eighth with the existence of a child of her deceased husband.
- Mother is excluded from the share of one third to that of one sixth with the existence of a descendent of the deceased person, such as his or her son.
- Son's daughter is excluded from the share of one half to the share of one sixth with the existence of daughter of the deceased person.
- And finally paternal sister is excluded from the share of one half to that of one sixth with the existence of full sister.

2. *Hajb hirmân* or deprivation-based exclusion, which can be simply expressed as

"disinheritance" as far as this very meaning is concerned. It is that a person is excluded from inheritance as a whole because of the existence of a certain person. This type of *hajb* is established on two bases:

(a) Every person who belongs to the deceased person through a certain person does not inherit with the existence of this person. To illustrate this, a son's son does not inherit with the existence of a son, with the exception of a mother's sons because they inherit along with her though they belong to the deceased person through her.

(b) The nearer to the deceased person is given precedence over the farer. For instance, a son excludes his brother's son. If two heirs are of the same degree, as when they are brothers of the deceased person, then the one whose relation to the deceased person is stronger is to be given precedence. In the given example (of brothers), a full brother is to be given precedence over a paternal brother, and so on.

Yet still, there are six persons who are not included in *hajb hirmân*, as they inherit in all cases though *hajb nuqsân* may be applied to them as clarified above. These six persons are: son, daughter, father, mother, husband, and wife.

The Inheritance of *Khunthâ* (Intersex)

In Arabic a *khunthâ* is a person who may have both genitals of a male and a female or none of them. If it is evident that he is a male (i.e., nearer to the male sex or sexual characteristics of male), then he is

to be treated as a male is treated in inheritance and vice versa. If neither state is evident, then the person in question to be treated as having the worse condition. To illustrate the latter case, if a woman dies and leaves behind a husband, a mother, a sister, and a paternal *khunthâ*, in this case if the *khunthâ* is treated as a male, he will take a share less than that he will take if treated as a female, and so he is to take the share of a male (i.e., a paternal brother) because it is less than the share of a female (i.e., a paternal sister).

If a *khunthâ* is regarded once as a male and another as a female to find out his condition as to the inheritance in question, and he is to inherit according to one of the two cases and be deprived of the inheritance according to the other, he is to be treated also according to the worse condition, which is "deprivation" here. An example of this is: A woman dies and leaves behind a husband, a full sister, and a paternal *khunthâ*. If the *khunthâ* is treated as a female, she will inherit, and if the *khunthâ* is treated as a male, he will not inherit. In this case, the *khunthâ* is to be treated as a male.

The Inheritance of a Fetus

According to Abû Hanîfah and some Mâlikîs, the share of four sons or four daughters – the bigger amount thereof – is to be kept aside for the fetus and the rest of the heirs are to be given the least shares as a way of taking precautions. According to Abû Muhammad, the share of three sons or the share of three daughters – the bigger amount thereof – is to be

kept for the fetus. And still, according to Abû Yûsuf, the share of one son or one daughter – the bigger amount thereof – is to be kept for the fetus. This may be the most evident view among these three views, because in most cases only one son or one daughter is delivered. If a verdict concerning the inheritance of a fetus is based on this third view, the judge must take a guarantor from the heirs because the pregnancy may result in more than one baby. Finally, according to some other views the distribution of inheritance is to be left undecided until the delivery takes place.

Another important matter in this regard is that every heir whose share does not change because of the change of the delivered baby – i.e., whether it is a male or a female baby – is to be given his or her share in full. For example, if a man dies and leaves behind a grandmother and a pregnant woman, the grandmother is to be given one sixth of the property because her share in the inheritance will not change whether the delivered baby is a male or a female.

The Inheritance of a Lost Person

"Lost person" here refers to any one who has been lost and no news is available about his whereabouts, and it is not even known whether he is alive or dead, and a judge gives a verdict that he is (considered legally to be) a dead person. According to Mâlik and Ash-Shâfi`î, a lost person is judged as being a dead person if he is lost for four years if he has been absent on a journey where he is most probably prone to destruction, as when he is absent for this period of time after some attack of enemies for example.

As far as inheritance is concerned, a lost person is not to be inherited by anyone except after his death has been proven or a verdict has been given to the effect that he is regarded as dead after being absent for a certain period of time as pinpointed above.

The Inheritance of an Apostate

If an apostate dies or is killed or joins a *darul-harb* (a place or country which is in a state of war against Islam) and a judge gives a verdict that he has joined such a place, some scholars maintain that the part of his property that he earned during his being a Muslim is to be distributed among his Muslim heirs and what he earned during his apostasy is to be taken by the public treasury (*baytul-mâl*). Some others are of the opinion that both earnings are to be distributed among his Muslim heirs. Yet scholars unanimously agree that what he earned "after joining" *darul-harb* is to be considered as *fay'* (war booty gained without fighting).

On the other hand, the apostate himself is not to inherit from any Muslim relative of his.

Interestingly enough, according to Ash-Shâfi`î, Mâlik, and the more famous view of Ahmad in this regard, an apostate is not to inherit or be inherited and his property is to be taken by the public treasury.

The Inheritance of a Captive

"Captive" here refers to a Muslim who has been taken by force as captive by people who are in war against Muslims.

As far as inheritance is concerned, such a captive is to be treated just like other Muslims, that is, he is to inherit others and be inherited by others. If he apostatizes, he is to be treated as an apostate, and if his life or death is not known, he is to be treated as a lost person, as clarified earlier.

The Inheritance of a Group of People Collectively

A group of people may die together, as when their boat is drowned, and there is a family relationship which connects them yet it is not known who among them died first. In this case all of them are to be regarded as having died at the same time, the property of each one of them is to be given to his living inheritors, and these deceased persons are not to inherit one another, i.e., the distribution of the inheritance of any one of them is not to be affected by his relation to any of the other deceased people and only the living heirs are to be treated as the only heirs of the person in question.

Inheritance and the Obligatory Bequest

Definition and legality

If a person has a descendant heir[1] (like his son) and this descendent dies during this person's lifetime, he must make a bequest for the children of this descendant with an amount equal to that which the

[1] A descendant heir here means that the heir in question is both a descendant of the deceased person and one of his inheritors at the same time, such as his son.

dead descendant would receive if he did not die, or with some part of his property up to one third of it, and one third is much as the Prophet (PBUH) said[1] when speaking about bequests. This is called "the obligatory bequest". If such a person dies before making a bequest for his descendant's children, they are to be given out of his property an amount equal to that which he was to bequeath during his lifetime. This is because it is a debt on his part, and if he dies before writing his bequest in this regard, this debt is not to be cancelled because of his death.

Almighty Allah says,

﴿كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ﴾

﴿*It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon the pious.*﴾

(Qur'ân: 2: 180)

And it has been narrated on the authority of Qatâdah that the Prophet (PBUH) said,

"Consider (the condition of) your relatives who are in need yet have no (share in your) inheritance and make a bequest for them from your property according to reasonable manners."[2]

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[1] Narrated by Al-Bukhârî, Muslim, and others.
[2] Narrated by 'Abdur-Razzâq and others.

In addition to this it has been narrated that the Prophet (PBUH) said,

> *"It is rightful upon a Muslim that he must not spend two (consecutive) nights without having his written bequest with him if he has anything that can be bequeathed."*[1]

Scholars have unanimously agreed that bequest is not obligatory for those who are not of one's relatives, and this means that the obligatory bequest be for one's relatives.

Along with these items of proof the general meaning of the following Qur'ânic words may be considered in this connection: ﴿*And give to the kindred his due...*﴾ (Qur'ân: 17: 26)

It may moreover be said that a descendant – who is referred to in the obligatory bequest – contributes – in many cases – to making the wealth of his father, so it is a sign of justice that his children be given out of this wealth.

Finally, some scholars say that the obligation of making bequest means that whoever makes it will be rewarded for that and whoever does not make it will be sinful. And, Allah knows best.

The conditions obligating the obligatory bequest

There are two conditions which obligate the obligatory bequest and without them it is not a must that such a bequest be made:

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[1] Narrated by Al-Bukhâri, Muslim, and others.

1. The descendent heir in question must not be one of those who deserve a share in the inheritance, and if he deserves even a small share, no bequest will be obligatory in this case. An example of this is that a man may die and leave behind a daughter and the sons of his son who died during this man's lifetime. In this case the son's sons deserve inheritance, so there is no obligatory bequest for them.

2. The deceased person must not have given the descendent heir in question any part of his property without remuneration – as a gift for example – equal to the amount he would make in an obligatory bequest. Yet, if he gave him less than that, he is to be given what completes the amount ordained for such a bequest.

The way of distributing inheritance with the obligatory bequest

The following steps may be followed for distributing inheritance properly and correctly when there is an obligatory bequest, i.e., when a descendant heir is to be given the right of his dead father for example:

1. The share of the son of the deceased person who died during the life of the latter is to be defined as if he was present at the time of distribution.

2. After that the share of the dead son is to be taken out of the property and given to his descendant who deserves the obligatory bequest.

3. Then the remainder of the property is to be distributed among the real heirs each according to his or her *shar`i* share.

These steps can be applied to the following example:

A woman has died leaving behind a husband, a maternal brother, and a daughter of her daughter who died during her (the deceased woman's) life. The inheritance can be distributed as follows:

- Originally and if the dead daughter were to be alive, the husband would take one fourth of the property, the remainder would go to the daughter, and the maternal brother would be excluded by the daughter.
- If the share of the dead daughter was to be given to her living daughter, the latter would take more than one third of the property. Therefore, she is to take only one third (as the bequest is not to exceed this limit) and the rest, which is also one third, is to be distributed between the husband (who has already taken one third as his ordained share) and the maternal brother, who is to take a share after the new amendment.

Questions and Answers on Inheritance

This section mainly consists of questions and answers on the distribution of inheritance in a number of common cases in addition to some questionable cases. This is apt to provide an easier understanding of the previously mentioned rules and laws of inheritance.

Q: A person died and left behind two daughters, a son's daughter, and a son's son who is the brother of this son's daughter. How is the inheritance to be distributed among them?

A: In this case the two daughters are to get two thirds of the property and the rest of it will be distributed between the son's son and his sister, the male having twice the share of the female. Interestingly enough, in this case the son's son, who is the brother of the son's daughter, is called "the blessed son" because if he was not existent his sister (the son's daughter) would be deprived of the inheritance. And, Allah knows best.

Q: A person has died leaving behind two full sisters, one paternal sister, and one paternal brother. How is the inheritance to be distributed among them?

A: The two full sisters are to get two thirds of the property and the rest will be distributed between the

paternal brother and the paternal sister, the male having twice the share of the female. The paternal brother in this case is a "blessed brother" as to the paternal sister of the deceased, because without him she would not get any share in the inheritance. And, Allah knows best.

Q: A woman has died leaving behind a husband, a mother, a father, a daughter, and a son's daughter. How is the inheritance to be distributed among them?

A: The husband will get one fourth, the mother one sixth, the father one sixth, the daughter one half, and the son's daughter one sixth. If the son's daughter had a brother (who would be the son of the son of the deceased woman) both the son's daughter and her brother would be deprived of the inheritance because the shares of the first four heirs (who are not to be deprived of inheritance in any case) would have consumed the total property. And, Allah knows best.

Q: A man has died leaving behind a wife, two daughters of a son, and a paternal sister. What is the share of each heir?

A: The wife will get one eighth of the property because of the existence of the two daughters of the son, the latter will get two thirds, and the paternal sister will get the remainder because she has become a *`asabah* with the two daughters. And, Allah knows best.

Q: A person has died leaving behind a maternal grandmother, a daughter, a son's daughter, a son's son, and a Christian wife. Who is to inherit and who is not, and what is the share of each heir?

A: The grandmother will get one sixth of the property, the daughter will get one half, and the remainder will be for both the son's daughter and the son's son, the male having twice the share of the female. Here the son's son is in the same degree of the son's daughter, so he turns her into a *`asabah* whether he is her brother or her cousin (here "cousin" means her paternal uncle's son). As for the wife, she is not to get any share in this inheritance because her religion is different from that of the deceased person. And, Allah knows best.

Q: A man has died leaving behind a paternal grandmother, a mother, two daughters, a son who has killed his father (the deceased man), a son's daughter, and a son of son's son. Who is to inherit and who is not, and what is the share of each heir?

A: The mother will get one sixth of the property because of the existence of descendant heirs, the two daughters will get two thirds, and the remainder will be distributed between the son's daughter and the son of son's son as *`asabahs*. The grandmother will get nothing because she has been excluded by the mother. There is nothing for the son who has killed his father either, because this murder deprives him of

inheritance. Still, as long as he is "prevented" from inheritance, he is to be treated as one who had no share in principle, and thus he is not to exclude anyone from inheritance. And, Allah knows best.

Q: A person has died leaving behind two sons of a paternal uncle (i.e., two cousins) one of whom is the deceased person's maternal brother at the same time. What is the share of each heir?

A: In this case the cousin, who is the deceased person's maternal brother, get two shares: he will get one sixth of the property as one of *dhawul-farâ'id* (i.e., as one of those who have definite shares) and the remainder will be distributed equally between him and the other cousin of the deceased as *`asabahs*.[1] And, Allah knows best.

Q: A man has died leaving behind a wife, a father, and a son's son. What is the share of each heir?

A: The wife will get one eighth of the property because of the existence of a descendant heir (i.e., the son's son), the father will get one sixth also because of the existence of the son's son, and the son's son will get the remainder of the property as *`asabah*. And, Allah knows best.

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[1] Review the difference between *dhawul-farâ'id* and *`asabahs* in the section dealing with "The Recipients of Inheritance" in this part of the book.

Q: A woman has died leaving behind a husband, a father, a father's father, and a full brother. Who is to inherit in this case?

A: The husband will get one half of the property because there are no descendant heirs of his deceased wife, the father will get the rest as *`asabah*, and nothing will be for the full brother or the father's father because they have been excluded from inheritance by the father. And, Allah knows best.

Q: A person has died leaving behind a mother, a full brother, and a paternal brother. Who is to inherit and who is not, and what is the share of each of those who are to inherit?

A: The mother will get one sixth of the property because of the existence of the two brothers, the rest of the property will go to the full brother as *`asabah*, and nothing will be for the paternal brother because he has been excluded by the full brother. Here, though the two brothers are in the same degree (being brothers of the deceased person), the full brother has excluded the paternal brother because the former is of a stronger degree of relation to the deceased person than the latter. Also, in spite of the fact that the paternal brother is excluded by the full brother, he and the full brother have excluded the mother from the share of one third to that of one sixth.[1] And, Allah knows best.

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[1] Review the section dealing with "*hajb nuqsân*" or decrease-based exclusion in this part of the book.

Q: A man has died leaving behind seventy pounds and a wife, a daughter, and a full brother.The full brother is indebted with twenty pounds from the seventy pounds constituting the total property. He has agreed with the other heirs (i.e., the mother and the daughter) that he will not take his share from the property in return for the heirs' relinquishing his debt. What is the share of each heir in this case, and how is the inheritance to be distributed among them?

A: First of all, we have to specify the share of each heir irrespective of the dissociation demanded by the full brother concerning his share in the inheritance. In principle, the wife will get one eighth of the property because of the existence of a descendant heir (the daughter), the daughter will get one half, and the remainder will be for the full brother. The property will be mathematically subdivided into eight shares and the three heirs will get from them each according to his or her proportion, as follows: the wife will get 1 out of 8 (which equals one eighth), the daughter will get 4 (which equal one half), and the full brother will get the rest of the eight, which is 3 (thus 1 + 4 + 3 = 8). After that the amount of the debt will be subtracted from the total property, which is seventy pounds as pinpointed in the question above: 70 – 20 = 50. These fifty pounds will be distributed between the mother and the daughter – as being considered this time to be an original amount of the property – with the same percentage of proportions

pinpointed above: the wife will get 1 (out of 5 this time) and the daughter will get 4 (also out of 5). In other words, the wife will get ten pounds out of fifty and the daughter will get the remaining forty pounds. And, Allah knows best.

Q: A person has died leaving behind a mother, a full brother, a maternal sister, and a grandfather. Who is to inherit and who is not, and what is the share of each heir?

A: The mother will get one sixth of the property because of the existence the brother and the sister and the remainder will be divided equally between the grandfather and the full brother. The maternal sister however will get nothing because she has been excluded by the grandfather. And, Allah knows best.

Q: A person has died leaving behind a full sister, a full *khunthâ*, and a paternal brother. Who is to inherit and who is not, and what is the share of each heir?

A: The answer to this question consists of three parts, as follows:

- If the *khunthâ* is treated as a male, the property will be distributed as follows: the full sister will take one third of the property, the full *khunthâ* (now a full brother) will take two thirds, and nothing will be for the paternal brother because he will be excluded by the full brother.

- If the *khunthâ* is treated as a female, the property will be distributed as follows: the full sister along with the *khunthâ* (now another full sister) will get two thirds of the property and the remainder will be for the paternal brother.
- If the condition of the *khunthâ* is confusing, i.e., it is not evident whether the *khunthâ* is a male or a female, he is to be treated as having the worse condition of the two above. Thus, he will be treated as a female and thus given one third of the property (as a full sister), the other full sister will take another third thus taking two thirds along with "her" sister, and the remainder (which is the remaining third) will be for the paternal brother. And, Allah knows best.

Q: A man has died leaving behind a son, two daughters, and the daughter of a son who died during the life of his father (the deceased man). What is the share of each inheritor?

A: This case involves the requirements of the obligatory bequest[1]. Accordingly, we shall first of all suppose that the son who died during his father's (the deceased man's) lifetime was alive during the time of distributing this inheritance. Thus, the property would be distributed between the two sons and the two daughters according to the rule "the male has

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[1] You may review the obligatory bequest in detail in the section dealing with it in this part of the book.

twice the share of the female" as they are two brothers and two sisters. Therefore, the share of the dead son would be one third of the property, and this is exactly the maximum limit of bequest. So, the daughter of this dead son will take one third, the son one third, and the two daughters one third as well. And, Allah knows best.

Conclusion

With Allah's help and guidance, we have come to the end of this volume which is also the last volume of this book. We hope that our effort could meet the needs of all Muslims who speak English as regards the various sections of *Fiqh* that have been dealt with in this work. We have tried to make things as easy as possible, gathering together all the basic and general information related to each section and listing a number of the most common and questionable matters related to each section in the form of questions and answers.

We hopefully invoke Allah to make the benefit of this work extend to whoever comes to read this book. We also adjure Him to forgive any error we may have made during any stage of work.

Finally, we praise Allah without Whose help nothing can be achieved and without Whose guidance no one can reach the truth.

Muhammad `Abdul-Fattah
25/7/1425 A.H.
9/9/2004 A.C.

Glossary[1]

adhân: Prayer call.

A.H.: After *Hijrah* (the Prophet's emigration to Medina).

Allâhu akbar: It literally means "Allah is Greater" and this consequently means that Allah is "greater" than "everything," so it is normally translated as "Allah is the Greatest".

al-yamîn al-ghamûs: Heinous oath.

al-yamîn al-laghw: Unintentional oath.

al-yamîn al-mun`aqidah: Deliberate oath.

Ansâr: Plural of Ansârî, who is one of the Companions of the Prophet (PBUH) from the inhabitants of Medina who embraced Islam and supported it and who received and entertained the Muslim emigrants from Mecca and other places.

Ansârî: One of the Ansâr.

Ash-Shâm: The region now covering Palestine, Jordan, Lebanon, and Syria.

`âqilah: As far as blood money (*diyah*) is concerned, this term normally refers to the relatives

[1] N.B.: Some of the transliterated terms in this glossary have been typed with capital initials and some others have been typed with small initials, each according to the way it is typed inside sentences, e.g., Ansârî and *badanah*.

of the person who has committed a crime that requires the payment of blood money, yet it concerns the "male" relatives who are – in addition to this – "mature," "sane," and "well-to-do," and who adopt the same religion of the person in question.

**`aqîqah:** *`Aqîqah* refers to the sacrificing of one or two sheep on the occasion of the birth of a child, as a token of gratitude to Almighty Allah. Also, the animal slaughtered for the newly born is called *`aqîqah.*

`asabah: Relatives in whose line of relationship no female enters.

awliyâ': Plural of *waliyy.*

**`awrah:** Certain parts in the body that must be covered and they differ according to the gender. And, *`awrah* can be translated in brief as "private parts".

Banû: Literally means "sons of".

bid`ah: Innovation in the religion.

bint labûn: Two-year-old she-camel.

bint makhâd: One-year-old she-camel.

Bint: Literally means "daughter of".

dînâr: The basic gold unit of currency.

dirham: The basic silver unit of currency.

dârul-harb: A place or country which is in a state of war against Islam.

dârul-islâm: A place or country of Muslims and where Muslims have control.

dhawul-farâ'id: These are those persons who have a right to definite shares in assets left by the deceased person.

dhawul-arhâm: Relatives connected through females.

diyah mughallazah: *Diyah mughallazah*, literally meaning "hardened blood money," is the blood money which is paid in case of semi-intentional killing.

diyah mukhaffafah: *Diyah mukhaffafah*, literally meaning "lightened blood money," is the blood money which is paid in case of killing by mistake or unintentional killing.

diyah: *Diyah* is the money or property paid because of some crime that a person has committed, and it is to be paid to the victim in question or to his *waliyy*.

faqîh: A scholar specialized in *Fiqh*.

fard `ayn: An individual obligation which is to be fulfilled by every Muslim, such as prayer. Compare "*fard kifâyah*"

fard kifâyah: It means that if one Muslim does it in a certain place that will be sufficient for all the other Muslims. To apply this to *adhân* (prayer call) for example, if a Muslim pronounces it, that will be sufficient for the other Muslims (in the mosque) and thus it is not obligatory that everybody there pronounces it.

farsakh: About two miles.

faskh: In marriage, *faskh*, literally meaning "nullification," signifies the nullification of marriage contract due to a legal reason.

fatâwâ: Plural of *fatwâ*.

fatwâ: A legal opinion or verdict normally given by a learned person who is specialized in religious knowledge.

Fiqh: The science dealing with Islamic jurisprudence in all aspects: worship, marital affairs, transactions, etc.

fiqhî: Pertaining to *Fiqh*.

ghurrah: The *diyah* (blood money) of a fetus, and it is a male slave or a female slave.

hadîth: Any of the statements of the Prophet (PBUH), i.e., his sayings, deeds, and approvals, etc.

Hajj: Literally, the word "*hajj*" means "heading for a scarified and glorified place with the intention of visiting". This literal meaning of *hajj* can also be used to refer to *Hajj* in *shar`î* terminology, as it in the latter means: to head for the Sacred House in Mecca with the purpose of worshiping Allah and performing certain prescribed duties including visiting certain sacred places.

Hanafîs: This word generally refers to the followers and proponents of *Imâm* Abû Hanîfah's school of *Fiqh*. Sometimes it is used to refer to Abû Hanîfah's views. In other words, when it is said, "The Hanafîs maintain that..." it can mean "Abû Hanîfah maintains that...".

H̱anbalîs: This word generally refers to the followers and proponents of *Imâm* Aẖmad Ibn H̱anbal's school of *Fiqh*. Sometimes it is used to refer to Ibn H̱anbal's views. In other words, when it is said, "The H̱anbalîs maintain that..." it can mean "Ibn H̱anbal maintains that...".

ẖarâbah: *H̱arâbah* is that a group of Muslims in a Muslim land cause chaos, shed blood, rob property, dishonor people, and destroy crops and cattle, thus defying the religion, morals, and laws.

H̱aram: The word *ẖaram* refers to the sacred precincts in Mecca, and sometimes it is translated as "Sanctuary".

Hijrah: It literally means "emigration" and in this book it refers to the Prophet's emigration to Medina.

ẖiqqah: Three-year-old she-camel.

ẖirz: Especially as far as theft is concerned, *ẖirz* is a thing in which money and other items of property are kept, e.g., closets for keeping money, stores for keeping commodities, etc.

ẖudûd: The legal punishments or penalties that have been enjoined by the *Sharî`ah* concerning certain acts of disobedience so that they may not be committed again.

Ibn Labûn: Two-year-old male camel.

Ibn: It literally means "son of".

ijtihâd: Personal Reasoning: a secondary source of Islamic Law.

îlâ': *Îlâ'* literally means "swearing" and terminologically is that a husband swears that he will not have intercourse with his wife for a certain period of time.

imâm: Often rendered as "leader" and in this meaning in particular it can be used in different contexts, e.g., *Imâm* Mâlik and *imâm* in prayer, as in the former it refers to a leading and pioneering scholar and in the latter it refers to a person who leads people in congregational prayer .

istikhârah: Asking (Allah) for proper guidance, and this is normally done by invoking Allah with certain words after performing two *rak`ah*s, according to the *Sunnah* of the Prophet (PBUH). See *Hadîth* No. 263, Vol. 2, *Hadîth* No.391, Vol. 8, and *Hadîth* No. 487, Vol. 9, *Sahîhul-Bukhârî*.

jadh`ah: Four-year-old she-camel.

jallâlah: This term refers to animals that are fed with impurities, and this includes camels, cows, sheep, and the like. It is prohibited to eat these animals.

jinâyah: *Jinâyah* represents any act which is committed or omitted in violation of a law forbidding or commanding it and for which punishment is imposed upon conviction.

Ka`bah: A square stone building in the Sacred Mosque in Mecca and toward it all Muslims turn there faces in prayer.

khalwah: Khalwah literally means "privacy," and correct *khalwah* is that a husband and his wife live –

or be – together after contracting a valid marriage in a place where they can sexually enjoy each other completely without fearing that anyone should enter as they do that, and on condition that neither of them has any natural, sensual, or legal impediment that prevents the undertaking of such enjoyment.

khamr: Any intoxicant is included in the general Arabic term "*khamr*'.

khitbah: *Khitbah* or engagement is that a man presents a proposal of marriage seeking to marry a certain woman.

**khul`:** This is the right of woman in demanding the dissolution of marriage. *Khul`* literally means putting off or taking off a thing. It is a kind of facility provided for the wife in securing divorce from her husband by returning a part or full amount of the bridal gift (*mahr*).

`iddah: The prescribed period during which a divorcee or a widow is not allowed to get married.

`Îdul-Adhâ: Sacrifice Feast.

khunthâ: In Arabic a *khunthâ* is a person who may have both genitals of a male and a female or none of them It can be simply expressed as "intersex".

**li`ân:** *Li`ân* can simply be identified with the phrase "oath of condemnation". It is applied in the following case: if a man accuses his wife of committing adultery and she belies him, the judge applies *li`ân* between them (in the manner pinpointed inside the book). It is called "*li`ân*," which literally means "invoking curse," because the husband says, "I invoke

Allah's curse upon myself if I am of those who tell lies".

mahr: Check the term "*sadâq*" up in this glossary.

mahram: It generally refers to a woman's husband or any of her unmarriageable male relatives, and when the term is related to a man it refers to any of his unmarriageable female relatives; also a man's wife may be called his *mahram*.

Mâlikîs: This word generally refers to the followers and proponents of *Imâm* Mâlik's school of *Fiqh*. Sometimes it is used to refer to Mâlik's views. In other words, when it is said, "The Mâlikîs maintain that..." it can mean "Mâlik maintains that...".

mawlâ: In this book this word refers to the "freed slave" of the person to whom he is attached, e.g., the *mawlâ* of Ibn `Abbâs.

mawqûdhah: An animal that has been killed by a violent blow.

maytah: Every animal that dies without killing or slaughtering is generally called "*maytah*".

mu`âwamah: It consists in selling the fruit on the trees in one, two, or three years even before it has made its appearance.

mudârabah: *Mudârabah*, which is also called *qirâd*, is a contract which is conducted between two persons who agree that one of them will pay to the other a sum of money in cash in order to trade therein and the profits will result from this are to be shared between the two according to the proportions upon which they both agree.

**mu`taddah:** A woman having a waiting period (*`iddah*).

muhallil: The *muhallil* marriage is an invalid form of marriage which is that a man temporarily takes a woman in marriage, has sexual intercourse with her, and then divorces her to go back to her ex-husband's bond after the termination of her waiting period.

muhsan: A *muhsan* person is one who has experienced sexual intercourse through a valid marriage, whereas a non-*muhsan* person is one who has not married yet; a virgin.

mukallaf: Legally responsible.

mulâmasah: *Mulâmasah* means touching the cloth without examining it, i.e., the buyer was just supposed to touch the cloth to strike the bargain.

munâbadhah: *Munâbadhah* means that the seller should throw the cloth to the buyer before he has carefully examined it. The very act of throwing the cloth will mean that the bargain has been struck.

munkhaniqah: An animal that has been killed by strangling.

musallâ: Prayer place.

**mut`ah:** The *mut`ah* marriage or temporary marriage is a personal contract between a man and a woman to cohabit for a limited period of time at the end of which she becomes automatically divorced, in return for a certain remuneration payable by the man. This is an invalid form of marriage.

mutaraddiyah: An animal that has been killed by a headlong fall.

muzâbanah: It is the exchange of fresh fruits for dry ones in a way that the quantity of the dry fruits is actually measured and fixed, but the quantity of the fresh fruits to be given in exchange is guessed while it is still on the trees.

nabîdh: *Nabîdh* generally refers to water which is sweetened with dates, raisins, and the like.

natîhah: An animal that has been killed by the goring of horns.

(PBUH): A formula literally meaning "Peace be upon him," and it is specified to be put in this form – (PBUH) – only when referring to Prophet Muhammad.

qadhf: Qadhf is that a person accuses another of committing adultery or fornication. It can be expressed as "slanderous accusation".

qawâmah: This term refers to the protection and maintenance which men enjoy as regards their relation to women.

qiblah: The direction toward which all Muslims turn their faces in prayer; it is the direction toward the Ka`bah in Mecca.

qisâs: Retaliation, and some render it as "the law of equality in punishment," and this is included in the word "*qisâs*" itself.

raj`ah: It literally means "taking back" and terminologically is that a man takes his divorced wife

back to wedlock without a new contract during her waiting period. It can simply be expressed as "revocation of divorce".

**raj`iyyah:** A *raj`iyyah* woman or a *raj`iyyah* divorcee is a woman whose divorce is revocable. Check the term "*raj`ah*" up in this glossary.

rajm: The stoning of a *muhsan* person (male and female) who commits adultery.

rak`ah: Unit of prayer.

**sa`:** One *sâ`* equals three kilograms approximately.

sadâq: *Sadâq*, also called "*mahr*," is terminologically the obligatory bridal money (or any form of property and the like) given by the husband to his wife at the time of marriage.

sadaqah: This word originally refers to alms which are paid or given out voluntarily, and it has been used in the Qur'ân and the *Sunnah* in certain contexts as referring to *Zakâh* or Obligatory Alms.

sahîh: The word "*sahîh*" literally means "authentic" or "sound"; and it is sometimes connected to the names of the books mainly containing collections of authentic *hadîth*s such as the Two *Sahîh*s of Al-Bukhârî and Muslim where there are the most authentic versions of *hadîth*s.

**Shâfi`îs:** This word generally refers to the followers and proponents of *Imâm* Ash-Shâfi`î's school of *Fiqh*. Sometimes it is used to refer to Ash-Shâfi`î's views. In other words, when it is said, "The Shâfi`îs maintain that..." it can mean "Ash-Shâfi`î maintains that...".

**shar`î:** Pertaining to the *Sharî`ah* (Islamic Law).

Sharî`ah: Islamic law which contains all the ordinances that Almighty Allah has prescribed for Muslims.

shighâr: The *shighâr* marriage is that a man exchanges his daughter or sister for another man's daughter or sister on condition that no reciprocation of *mahr* (Islamic dowry) is required. This is an invalid form of marriage.

siwâk: Cleaning stick for teeth, and Muslims use it especially when it is time to perform prayer according to the *Sunnah* of the Prophet (PBUH).

sunnah mu'kkadah: An affirmed act of the *Sunnah*.

Sunnah: The original meaning of the word is "way" or "path to be followed," but it is used as a technical term for all the authentically transmitted words, actions, and sanctions of the Prophet (PBUH).

**ta`zîr:** A discretionary punishment which is enjoined by the ruler (or the judge) concerning a crime for which the *Shar`îah* has not specified a legal punishment, or for which the *Shar`îah* has specified a certain legal punishment yet when this punishment is to be applied the conditions of implementation are not met, such as having sex with a woman without intercourse (as in kissing and caressing) and stealing something whose value is less than the value which obligates cutting the hand.

Tafsîr: Exegesis of the Qur'ân.

talâq: *Talâq* or divorce is simply "dissolution of the marriage union". It can also be defined as "the dissolution of marriage, or the annulment of its legality by the pronouncement of certain words".

tashrîq: *Tashrîq* literally means "airing," and this term is always connected to the days known as "the Days of *Tashrîq*," which are the three days following *`Îdul-Adhâ* (Sacrifice Feast). They are called "the Days of *Tashrîq*" because pilgrims used to "dry" the meat of their sacrificial animals and make it dried slices during these days.

tasmiyah: To say, *"Bismi-llâhi-rahmânir-rahîm* (In the Name of Allah, the All-Merciful, the Ever-Merciful)".

tawâf: The act of circumambulation the Ka`bah in Mecca.

udhiyah: *Udhiyah* is a camel, a cow, or a sheep which is slaughtered on the Day of Sacrifice and the three days of *Tashrîq* as a way of drawing near to Almighty Allah. The Day of Sacrifice is *`Îdul-Adhâ* or Sacrifice Feast, and the three days of *Tashrîq* are the three days following this Day of Sacrifice.

Ummah: This word is usually translated as "nation" yet it is used here in its Arabic form as its meaning is capable of more than that. For, it refers to the nation of Prophet Muhammad (PBUH) in all times and places as well as to those who believe in him from among jinn or even the inhabitants of any other planet.

**`Umrah:** The word *`Umrah* is derived from the Arabic word "*i`timâr*" which means "visiting". And, in

shar`î* terminology as an act of worship *`Umrah is to visit the sanctified Ka`bah, circumambulate it, perform the *sa`y* or going between As-Safâ and Al-Marwah, then have the hair of the head shaved or cut short.

ûqiyyah: One *ûqiyyah* equals forty *dirhams*.

waliyy: Legal guardian, and in cases such as retaliation and reception of blood money, the *waliyy* normally refers to the heir of the victim.

Zâhirîs: A school of Islamic jurisprudence (*Fiqh*) named after Ibn Hazm Az-Zâhirî.

Zakâh: *Zakâh* is the name of what man takes out of his property in a certain amount that is specified by the *Sharî`ah* as a right of Allah which is to be paid for the poor and the other recipients of *Zakâh*. It is called *zakâh* because it purifies both the soul and the property of whoever pays it, especially with the fact that the Arabic word *"zakâh"* means "purity," "growth," and "blessing". *Zakâh* is the second obligation in Islam after Prayer (*Salâh*).

zihâr: *Zihâr* can be defined as regarding one's wife as the back of one's mother. This is expressed when a man says to his wife, "You are like my mother's back," meaning "You are prohibited to me".

zinâ: Adultery or fornication.

Transliteration Table

Arabic Character	Symbol
أ/ء	a/'
ب	b
ت	t
ث	th
ج	j
ح	h
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	s
ض	d
ط	t
ظ	z
ع	`
غ	gh

ف	f
ق	q
ك	k
ل	l
م	m
ن	n
هـ	h
ة	h/t
و	w
ي	y
...َ	a
...ِ	i
...ُ	u
...َا/آ	â
ُو	û
ِي	î
َو	aw
َي	ay